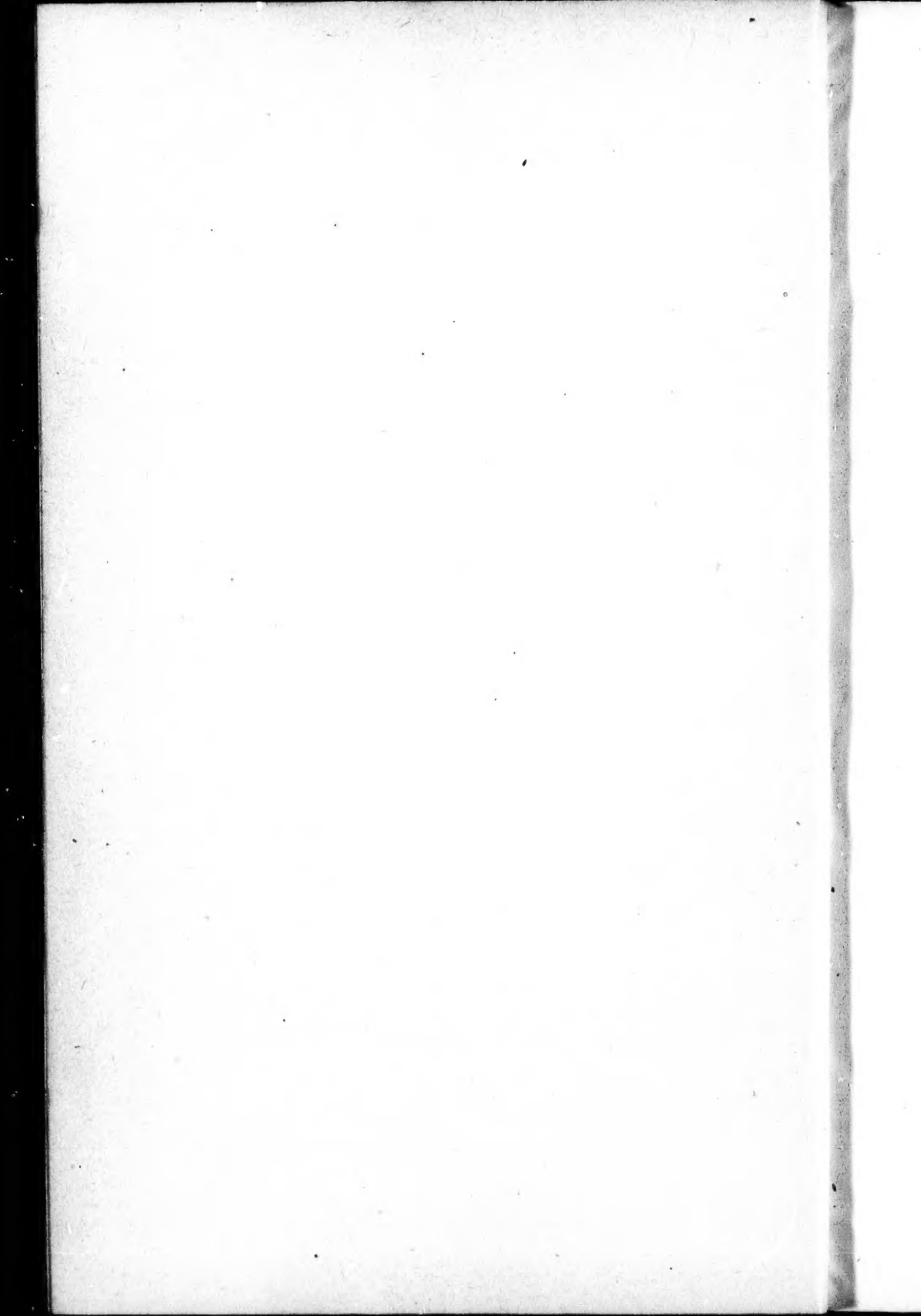




BEHRING SEA.

British Counter-case.—Drafts.

Counter-case. Draft "A"	
The diminution of seal life on Pribiloff Islands.....	
The United States' system of monopoly, the lessees and the natives.....	
Second draft of counter-case on behalf of Great Britain.....	
Preliminary draft counter-case to meet part II of United States' case.....	

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Counter Case

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(A.)

United States' Case, p. 26.

(a) 1. WHILE the title of Russia to the territory north and west of, and including, the Peninsula of Alaska was universally recognized, her claim to the north-west coast of the American Continent, by which term it is intended to designate the coast between Prince William Sound and the mouth of the Columbia River, was earnestly disputed by more than one powerful nation.

Ibid., p. 33.

(a) 2. While the claim of Russia to the territory embracing the Aleutian Islands, the Peninsula of Alaska, and coasts and islands of Behring Sea was undisputed, the shores and adjacent islands of the American Continent, south of latitude 60° as far as California, were during the latter part of the eighteenth and the first quarter of the present century the subject of conflicting claims on the part of Russia, Great Britain, Spain, and the United States.

North-west Coast. United States' Case, p. 26.

The definition of the north-west coast, upon which much of the argument on behalf of the United States appears to be based, appears now for the first time, as above, (a) 1.

British Case, p. 60, et seq.

It is shown in the British Case that the words "north-west coast" were understood, when the negotiations took place, to apply to that portion of the American Continent beginning at Behring Straits.

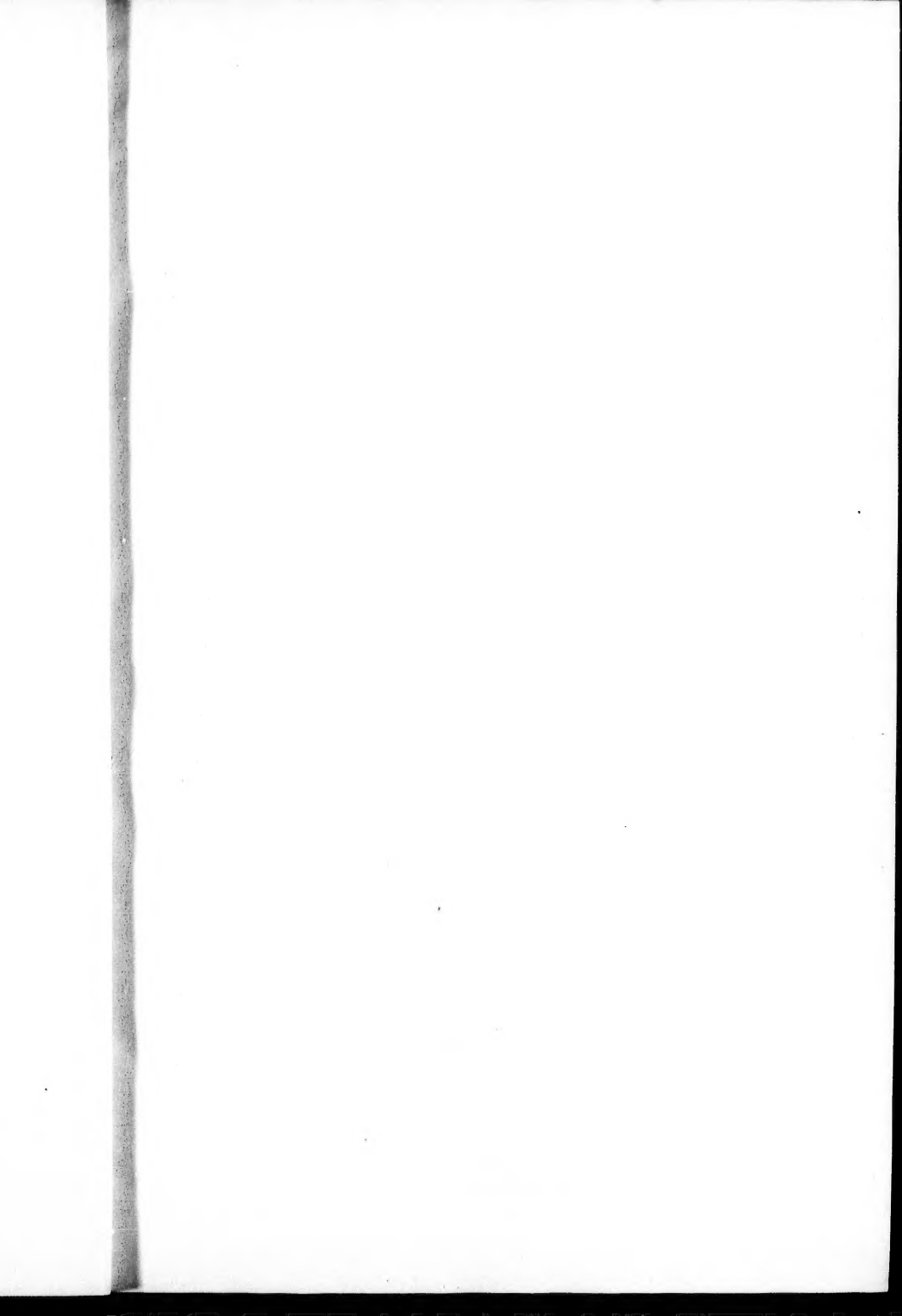
United States Case, p. 35. See also p. 39. United States' Case, p. 33.

Indeed, in another part of the United States' Case these words are so used.

It is in another place, however, asserted that the claim of Russia to the coast and islands from Behring Straits to the 60th parallel of latitude was undisputed, and that only that portion south of latitude 60° formed the subject of the conflicting claims.

It will be noticed in this connection that while
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Mr. Blaine defines the north-west coast as extending from 42° to 60° north latitude, and marks it as terminating to the north at the 141st meridian, in one of the notes accompanying his despatch of the 17th December, 1890 (see United States' House of Representatives, Ex. Doc., No. 144, 51st Congress, 2nd Session. *British Case*, p. 60. Also *British Case*, vol. iii), it is defined on p. 26 of the United States' Case as extending from Prince William Sound to the mouth of the Columbia River, thus stretching beyond Mr. Blaine's northern terminal point by at least 150 miles, and falling short of his southern point by about 280 miles. Again, on p. 58 of the United States' Case, as already quoted, the north-west coast is said to be limited to the west (at its northern end) by Yakutat Bay and Mount St. Elias, which, though indefinite to the amount of 50 miles or so, agrees more nearly with Mr. Blaine's first quoted definition. The extension of the north-west coast to Prince William Sound does not, moreover, agree with the contention in regard to it held on p. 58.

In addition to what has already been advanced in the *British Case*, Chapter III, pp. 59 to 76, it can be shown by actual reference to published Maps and documents (apart from the negotiations leading up to the conclusion of the Conventions of 1824 and 1825, elsewhere cited):—

(1.) That *North-west Coast of America* and *North-west Coast* are practically identical expressions, "America" being in the latter case understood, and the abbreviated form being merely arrived at by the elision of that word.

(2.) That the full meaning of the term, in either form, included the western coast of North America from an indefinite point to the southward, northward, and definitely as far as Behring Strait.

(3.) That in one or other form, it has nevertheless been laxly employed in an indefinite way as a general name for various different parts of the west coast of North America.

The term *North-west Coast*, or, more fully, *North-west Coast of North America*, is in fact a descriptive one of a somewhat peculiar character.

This term, however, appears in the title of some very early Maps, such as that by Müller, dated 1761, which is entitled, "A Map of the Discoveries made by the Russians on the North-west Coast of America;" that accompanying the

original edition of Cook's third voyage, dated 1874, and entitled, "Chart of the North-west Coast of America and the North-east Coast of Asia;" and that in Vancouver's voyage (1798), named "A Chart showing part of the Coast of North-west America."

The last named Map shows that, in these instances, we should read in full "Coast of the North-western part of the North American continent," and, conversely, "Coast of the north-eastern part of the continent of Asia."

This is particularly obvious, when it is remembered that, especially in the case of the first of the Maps above referred to, the explorations set down were conducted from Russia, by way of Okhotsk, in the sea of the same name, and that, consequently, if direction from the point of departure had been considered, what is named the north-east coast of Asia would have in reality been the *north-west coast* of that continent.

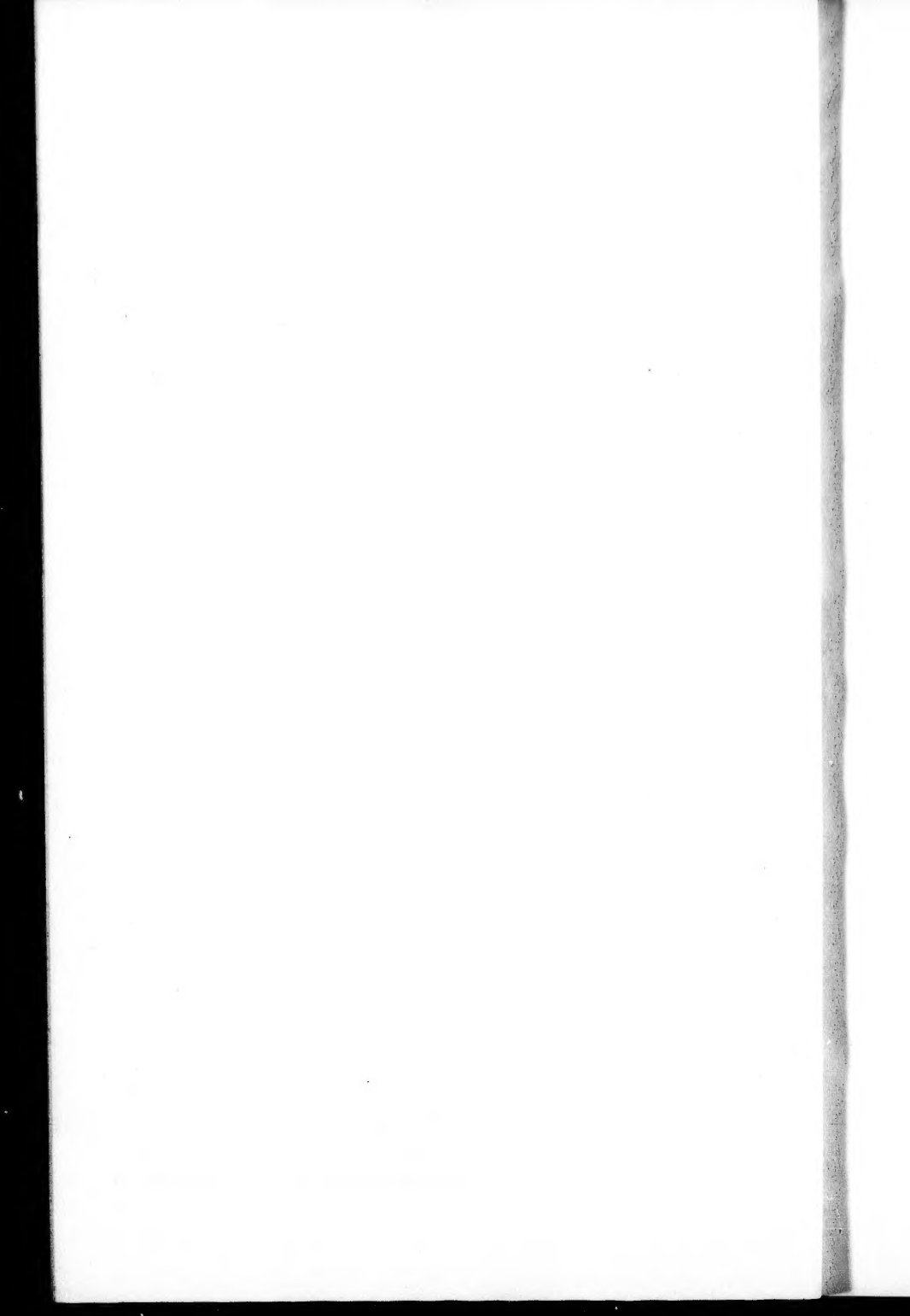
The description "North-west Coast of America" occurs in the title only in Müller's Map, while the coast delineated extends to what is now known as Behring Strait.

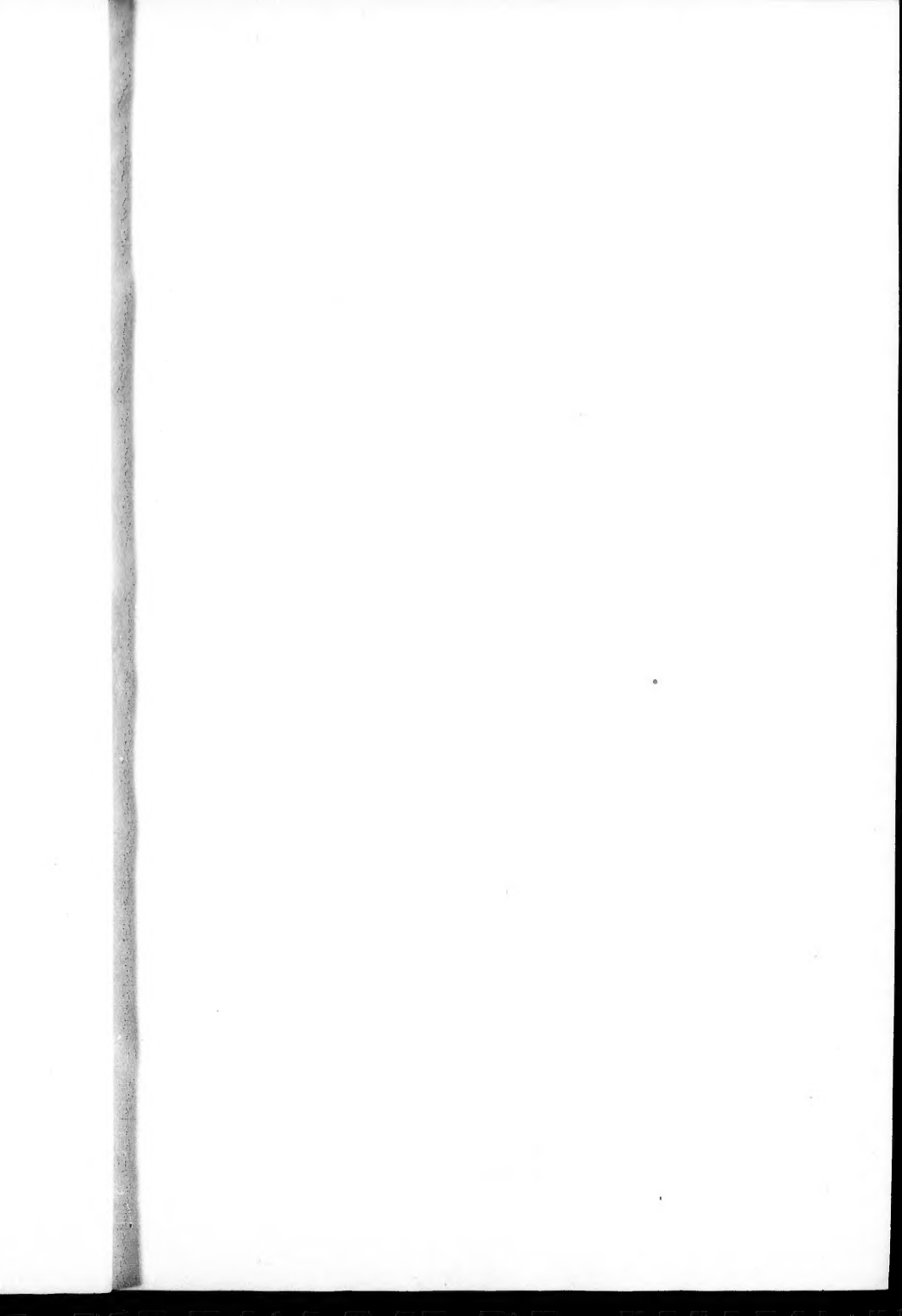
At the date of Cook's third voyage in 1784, we again find a corresponding title, viz., "Chart of the North-west Coast of America and North-east Coast of Asia." This Chart is drawn so as to include the coast from the vicinity of the point where it was first reached by Cook (about latitude 44°) to Icy Cape, to the north of Behring Strait, and in the Arctic Ocean. The same remarks apply to the corresponding Map in the French edition of Cook's Voyage, dated 1785.

A Chart published in 1802, by the Quartermaster-General's Department, Russia, shows (in Russian characters) the legend "part of the north-west coast of America" running on the continental land from a point near the coast and to the north of Behring Strait, continuously to a point between the 53rd and 54th degrees of latitude.

Numerous instances might be quoted showing that the term was not restricted to the limits contended for by the United States, and that it has generally been used with the utmost laxity, even by those likely to be best informed on the subject. Witness the following:—

"North-west Coast of America, United States' Coast Survey, Benjamin Peirce, Superintendent,





1868," sheets 1 to 3. These include the coast continuously from the vicinity of the Strait of Fuca (sheet 1) to some distance west of Kadiak and Seven Islands (sheet 3), ending to the westward between the 157th and 158th meridians, and showing the eastern part of Bristol Bay.

Thus, in the United States' "Alaska Pacific Coast Pilot," Part I, 1883, which was edited by Mr. W. H. Dall (a gentleman whose familiarity with all historical and geographical points connected with the west coast is well known), on p. 237, under "List of Charts issued by the United States' Coast and Geodetic Survey—Sailing Charts—*North-west Coast of America*," is found catalogued "No. 4, Chirikoff Island to Nunivak." This particular Chart is entered as "in preparation," but its title carries the term "north-west coast" up to or beyond latitude 60° within Behring Sea.

In Mr. Blaine's despatch of the 17th December, 1890, particular importance is, however, attached to a small and rather poorly engraved Map which appears in Mr. H. H. Bancroft's works, vol. xxvii (1884), which is the first of two volumes entitled "History of the North-west Coast."

This Map is entitled "Map of the North-west Coast," and is actually reproduced in fac-simile in the despatch. This Map appears to be regarded as an argument conclusive in itself, and it is said of it, "The Map will be found to include precisely the area which has been steadily maintained by this Government in the pending discussion." *

If Mr. Blaine had written "precisely that part of the west coast of America," he would have been more accurate, for of this coast the Map in question actually includes from about latitude 40°, in the vicinity of Cape Mendocino, to the vicinity of that part of the coast where latitude 60° reaches the Pacific.

The area of the Map is, however, a very different matter, as it stretches eastward so as to

* Mr. Blaine does not appear to have noticed one curious circumstance connected with this "carefully prepared Map." In the northern part of the Map, each tenth degree of latitude is indicated, including 70°, 60°, and 50°, and, on the west coast, the 40th parallel is also shown by a line correctly placed, to the south of Cape Mendocino. It is, however, indicated in the margin as latitude "42." On the opposite or eastern side of the Map the line of latitude actually shown is latitude 42, and it is correctly so named. This peculiar mistake occurs both on the original and on the reproduction.

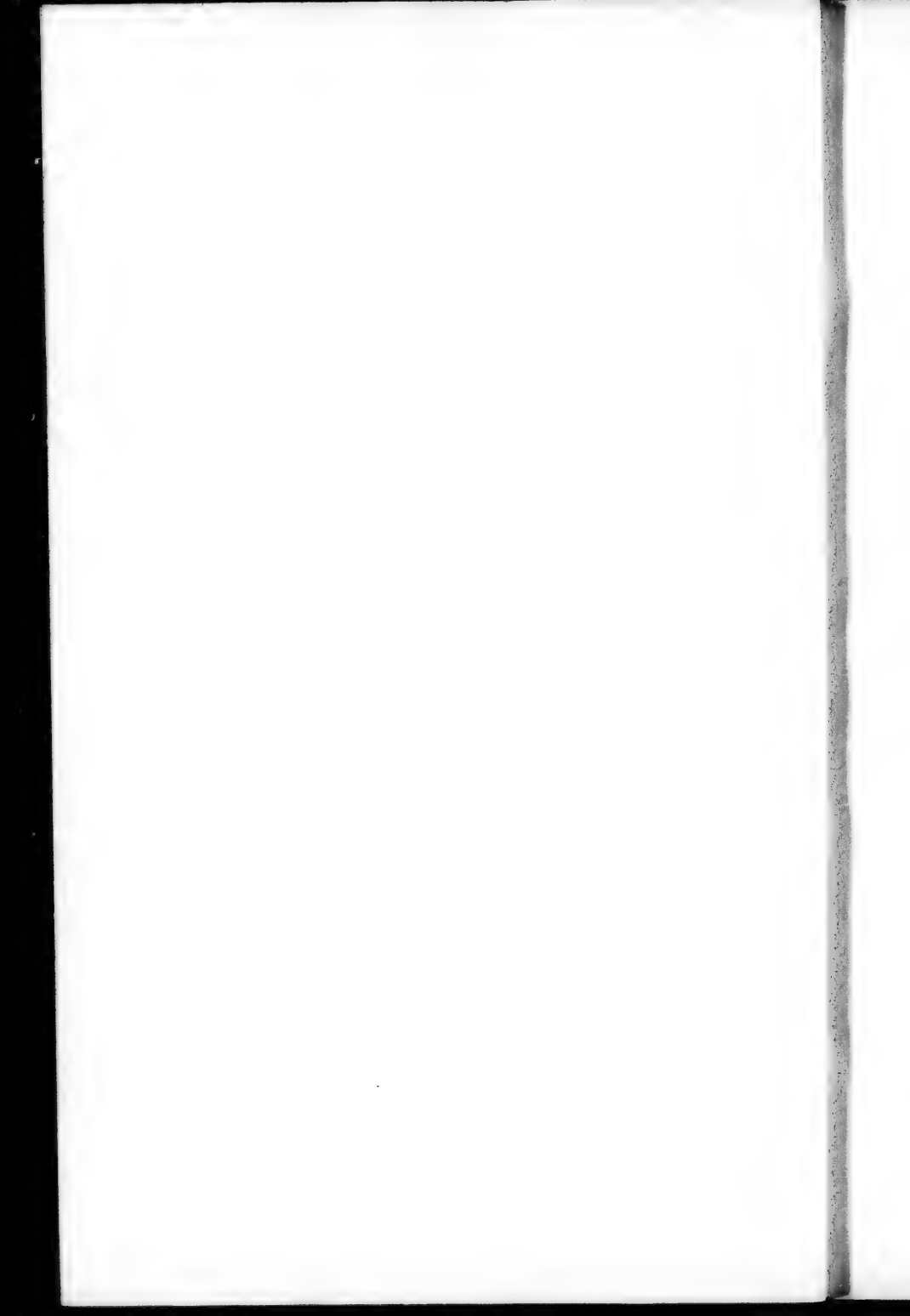
include Hudson Bay and Strait, Davis Strait, and the St. Lawrence River nearly to its mouth : in fact, almost the entire northern width of the North American Continent. We are fortunately, however, not obliged to criticize this point alone by the exigencies which determined the lines upon which this particular Map was cut off by the draftsman—for it is evidently by its construction a reproduction of some part of a more inclusive Map of the continent.

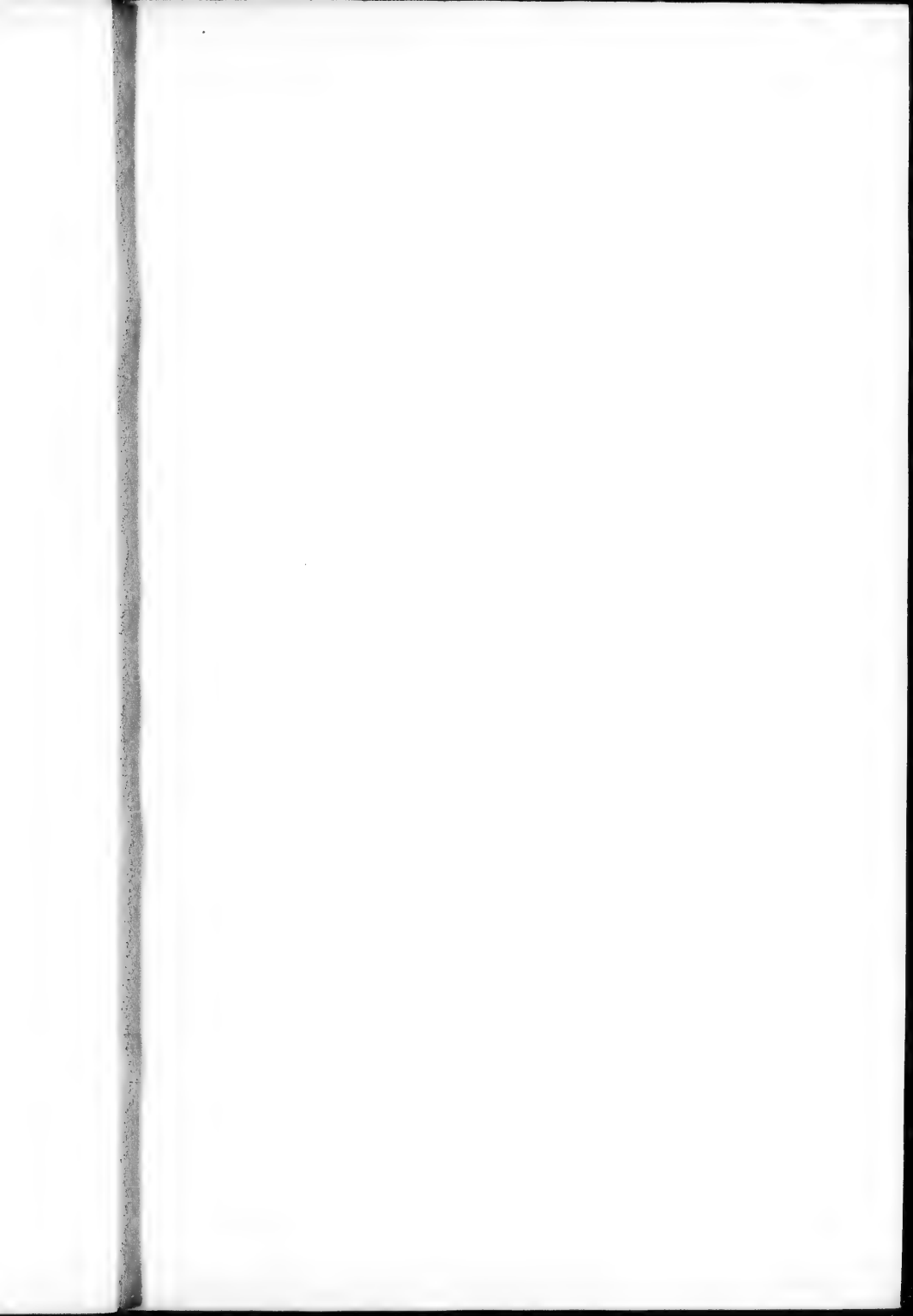
The text of the work to which it is an appendage explains the limits which the historian had placed himself under, and, at the same time, very clearly shows that he did not suppose the title of his work alone would render its scope clear to his readers. On the second page of the first volume, and in explaining the scope of his work, Mr. Bancroft writes : "*The term north-west coast, as defined for the purposes of this history, includes the territory known in later times as Oregon, Washington, and British Columbia ;*" thus rendering it obvious that for convenience he embraced under that term certain parts of the west coast which subsequently shaped themselves into three distinct territorial divisions. As he had already treated of the history of California (vol.), this was excluded, and as he proposed to treat separately of Alaska (vol. xxxiii), this, also, was eliminated. As a matter of fact, however, he found it convenient to include in his Map a greater extent of the west coast than that above defined, to the north and south, as we have already seen he did not scruple to do to the east. His Map actually includes a considerable part both of the coast and the interior of Alaska in one direction, and of what is now the State of California in the other.

The Treaties of 1843 (11th January) and of 1859 (12th January) between Great Britain and Russia refer to the privileges of trade under Article VII of the Treaty of 1825 to be exercised on "North-west Coast." Article III of the Treaty of 1825 shows the coast extended to the Frozen Ocean.

The statements made in the United States' Case and summarized in the paragraphs at the head of this chapter (1 and 2) are, it is submitted, irrelevant to the main issues in dispute.

British Case, p. 41. The ownership of the coast is immaterial, as was in effect said by Lord Londonderry in his first letter.





The British Case is accordingly confined to a discussion of the user of the waters covered by the Ukase of 1821 and to maritime rights.

It is not, therefore, proposed to examine at length, in this Counter-Case proper, the claim of Russia to title in America.

It is, however, impossible to ignore wholly some of the statements touching it put forward by the United States in the Case.

It cannot be said with accuracy that the shores and islands of Behring Sea became as early as in 1821 an undisputed part of the Russian Empire. Early title.

Her title to this territory had in no way been admitted, nor was it regarded as being indisputable by either England or the United States.

So far as regards prior discovery, Behring had, it is true, in navigating that sea, discovered the continent on its eastern shores, but he formed no Settlements, and in no way took formal possession, nor did he ever even land on the mainland.

The right gained by prior discovery in the absence of Settlements or possession, whatever it may be, if asserted as to the whole coast of this sea, or as to all but a very small part of it, might well have been contested by England in right of the explorations of Cook.

In fact, in 1819 there was but one Settlement on the whole coast of Behring Sea, at Nashagak or Bristol Bay, established by Kossarovski in the previous year.

Had any Power taken possession of any part of that coast not actually occupied by Russia, it is, at least, very doubtful whether Russia could have successfully claimed against it.

The truth would seem to be that to a large portion of the coast no valid title had been established at all.

That this was the view taken by England and the United States during the discussions on the Ukase of 1821 will be shown later on.

It was unoccupied territory, the title to which, by prior discovery, was open to doubt and dispute, and if other nations had pushed their trade there, as they did up to latitude 60°, there is at least no clear ground on which Russia could have successfully resisted their progress.

It suits the United States' Case now to say that the title of Russia was "universally recognized;" and this assertion, and the arguments in support of it, are rendered more plausible by the fact, that the territorial right by itself was not thought worth disputing.

British Case,
Appendix, vol. i,
p. 33.

Ibid., p. 15.

The article from the "North American Review" says that the coast, even as far south as Behring Bay, was, for practical purposes, as worthless as a floating iceberg, and that the United States' trade there had long been abandoned. The "Quarterly," while it admits Russia's claim to 59° north latitude on the score of priority of discovery, shows, by the previous sentence, that, in the absence of occupation, they regarded this claim as doubtful, while the "North American Review" (p. 33) denies its validity altogether.

At p. 34, the writer says Russia's object north of 51° was evidently the monopoly of the fur-trade, to secure which she desired to keep foreigners off the coast.

The evident truth is that both Powers, Great Britain and the United States, attached importance only to the claim of maritime jurisdiction.

The reason for the conflict between the Powers evoking constant reference to the coast south of the Alaskan Peninsula is obvious.

United States'
Case, pp. 50, 51.

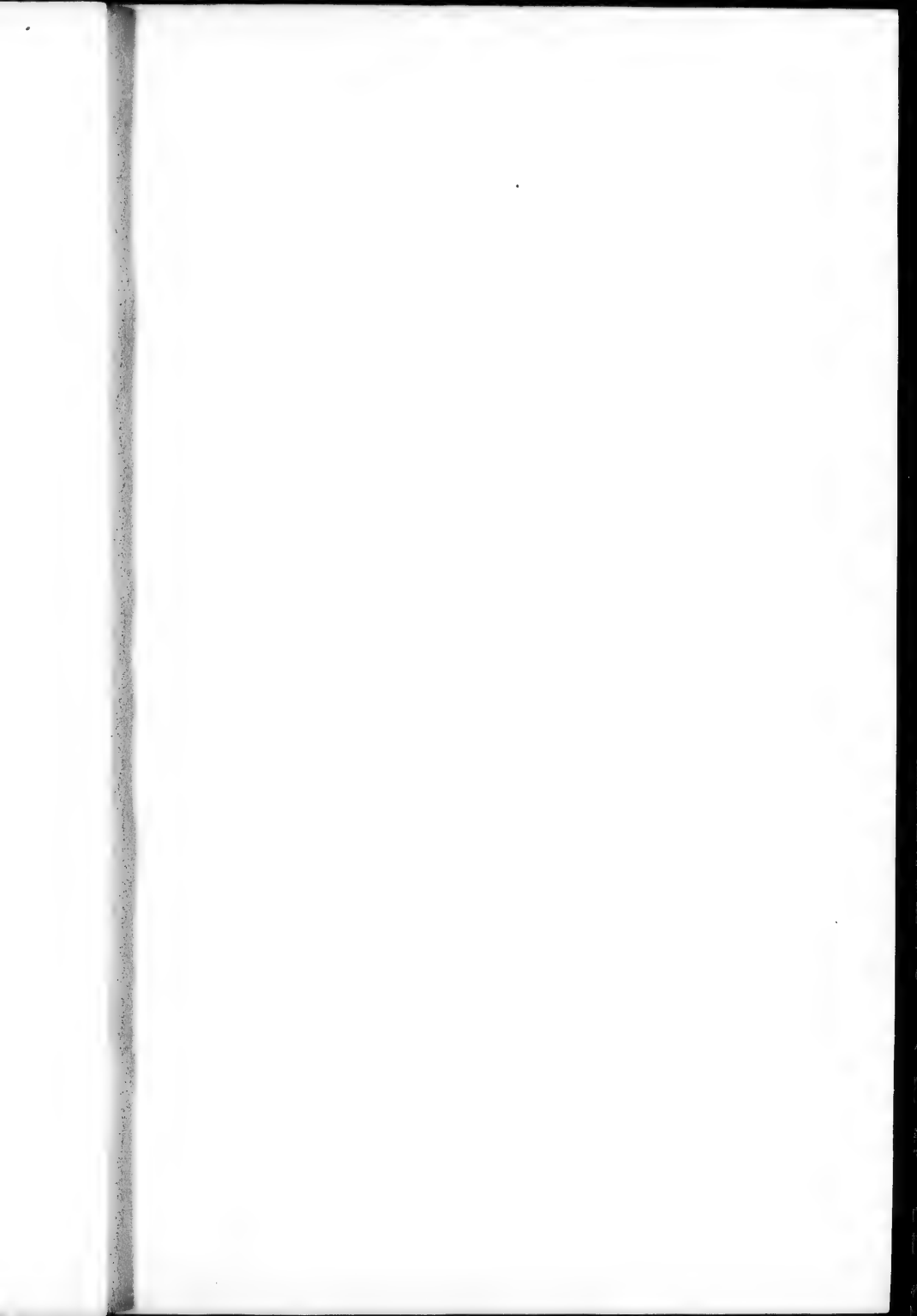
The interests of hunting and of commerce undoubtedly centred there. The territory to the north—uninhabited, as it was, by others than the aborigines—was known chiefly to explorers, none of whom attempted to make settlements, either temporary or permanent; but the statement to the effect that the competition for trade between Great Britain and the United States was limited to the coast and islands between latitudes 51° and 55° is, however, as shown by the records in the British Case, without foundation in fact.

It is to be borne in mind that, on the 28th February, 1822, M. Poletica, in a letter to Mr. Adams, had set out at length the grounds on which Russia claimed title down to latitude 51°, by reason of first discovery, first occupancy, and peaceable possession of more than half-a-century, and this refusal to admit any part of their claim is contained in the instructions to Mr. Middleton, who was about to enter upon negotiations for a settlement of the difference.

British Case,
Appendix, vol. ii,
p. 4.

Mr. Adams then refers to an article in the "North American Review" as showing that the rights of discovery, of occupation, and of uncontested possession alleged by M. Poletica are all without foundation in fact.

He points out (evidently quoting from Humboldt's "Essay on New Spain," Book III, chap. 8,



p. 344) that beyond latitude 59° the Russian factories are scattered and distant from each other, communicating only by sea, adding that the new denominations, America or Russian possessions in the new continent, must not lead them to believe that the coast of Behring Sea, the Peninsula of Alaska, or the country of the Ischugatschi, have become Russian provinces in the same sense as given to the word when speaking of the Spanish provinces of Sonora or New Biscay.

In this article it is said :—

"We further desire that our conception of the points really at issue may be distinctly understood. It is not, we apprehend, whether Russia has any Settlements that give her territorial claims on the continent of America. This we do not deny, but it is whether the evidence of those Settlements and the discoveries of her navigators are such as they are reported to have been, and whether they entitle her to the *exclusive possession* of the *whole territory north of 51°*, and to sovereignty over the *Pacific Ocean beyond that parallel*."

It is true that this Reviewer afterwards admits the claims of Russia north of Behring Sea in latitude 59° 30' to have a plausible foundation, and he confines the discussion to the territory south and east of it, explaining that in his view for all practical purposes, from a territorial point of view, the other is utterly worthless. The Reviewer then discusses and doubts the right resulting from mere discovery, and adds, "The claim of Russia to sovereignty over the Pacific Ocean north of latitude 51°, on the pretence of its being a close sea, is, if possible, more unwarrantable."

On the same day (the 22nd July, 1823), Mr. Adams wrote to Mr. Rush, the United States' Minister in London, that the discussion of the Russian pretensions necessarily involved the interests of the three Powers, and rendered it manifestly proper that the United States and Great Britain should come to a mutual understanding with respect to *their respective pretensions*, as well as upon their joint views with reference to those of Russia. He therefore forwarded to Mr. Rush copies of the instructions to Mr. Middleton, and added :—

"The President wishes you to confer freely with the British Government on the subject."

This article had been sent by Mr. S. Canning, at Washington, to Karl Bathurst, November 21, 1822. (British Case, Appendix, vol. ii, p. 26.)

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In this letter Mr. Adams says:—

United States' Case, Appendix, vol. i, p. 146.

"When M. Poletic, the Russian Minister here, was called upon to set forth the grounds of right conformable to the laws of nations which called the issuing of this Decree, he answered in his letters of the 28th February and 2nd April, 1823, by alleging first discovery, occupancy, and uninterrupted possession.

Qy. Not quite consistent with Mr. Blaine's account of Russia's title, and his references to "all the discoveries of Vitus Behring and other great navigators," June 30 (iii, 493), and Russia's "ancient possessions."

"It appears upon examination that these claims have no foundation in fact. *The right of discovery on this continent claimable by Russia is reduced to the probability that in 1741 Captain Tehirikoff saw from the sea the mountain called St. Elias in about the 59th degree of north latitude. The Spanish navigators as early as 1582 had discovered as far north as 57° 30'.*

"As to occupancy, Captain Cook, in 1779, had the express declaration of M. Ismaeloff, the Chief of the Russian Settlement at Unalaska, that they knew nothing of the continent in America; and in the Nootka Sound controversy between Spain and Great Britain it is explicitly stated in the Spanish documents that Russia had disclaimed all pretension to interfere with the Spanish exclusive rights to beyond Prince William Sound, latitude 67°.

"It never has been admitted by the various European nations which found Settlements in this hemisphere, that the occupation of an island gave any claim whatever to territorial possession on the continent to which it was adjoining. The recognized principle has rather been the reverse, &c."

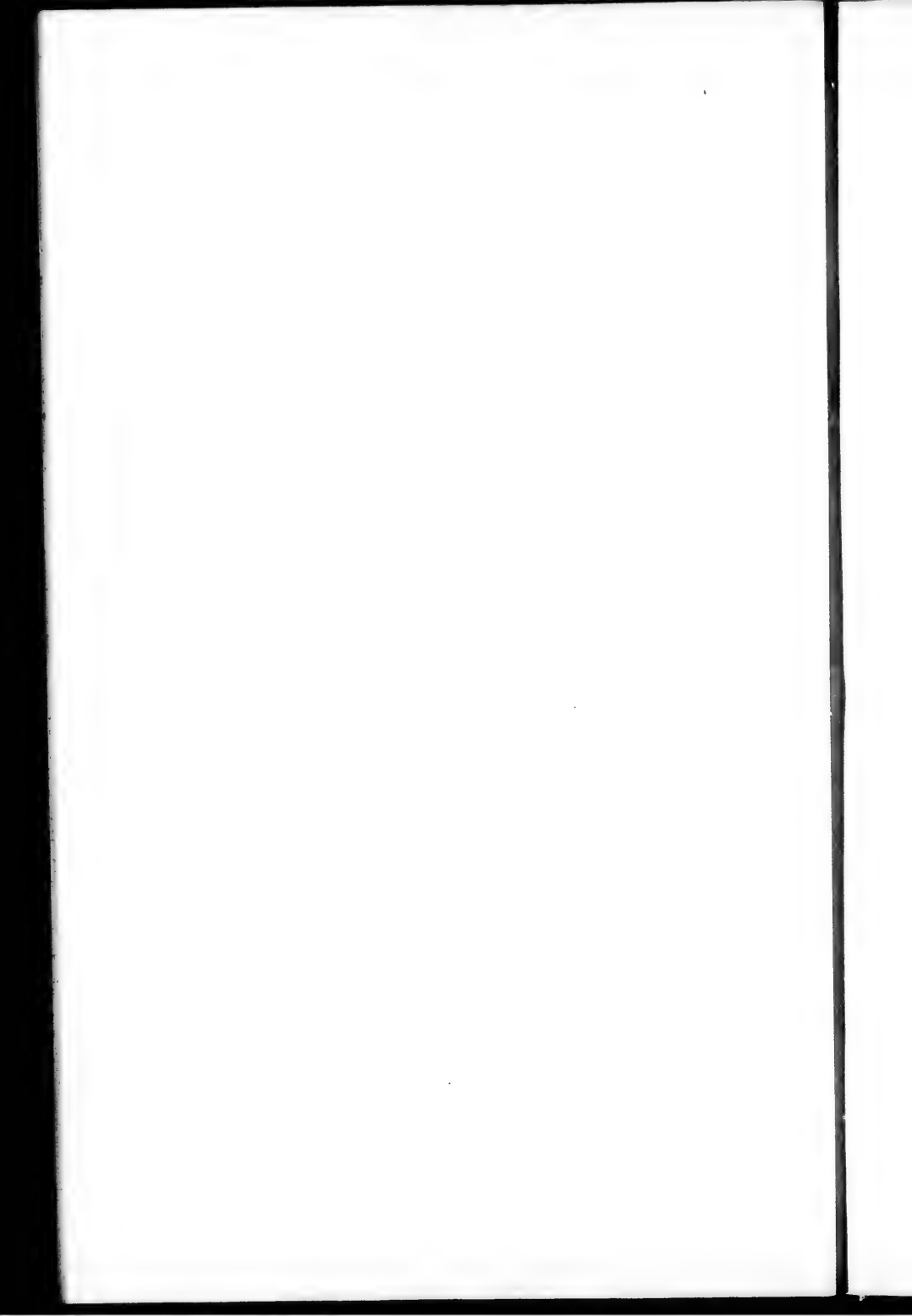
British Case, Appendix, vol. ii. See generally pp. 12-16.

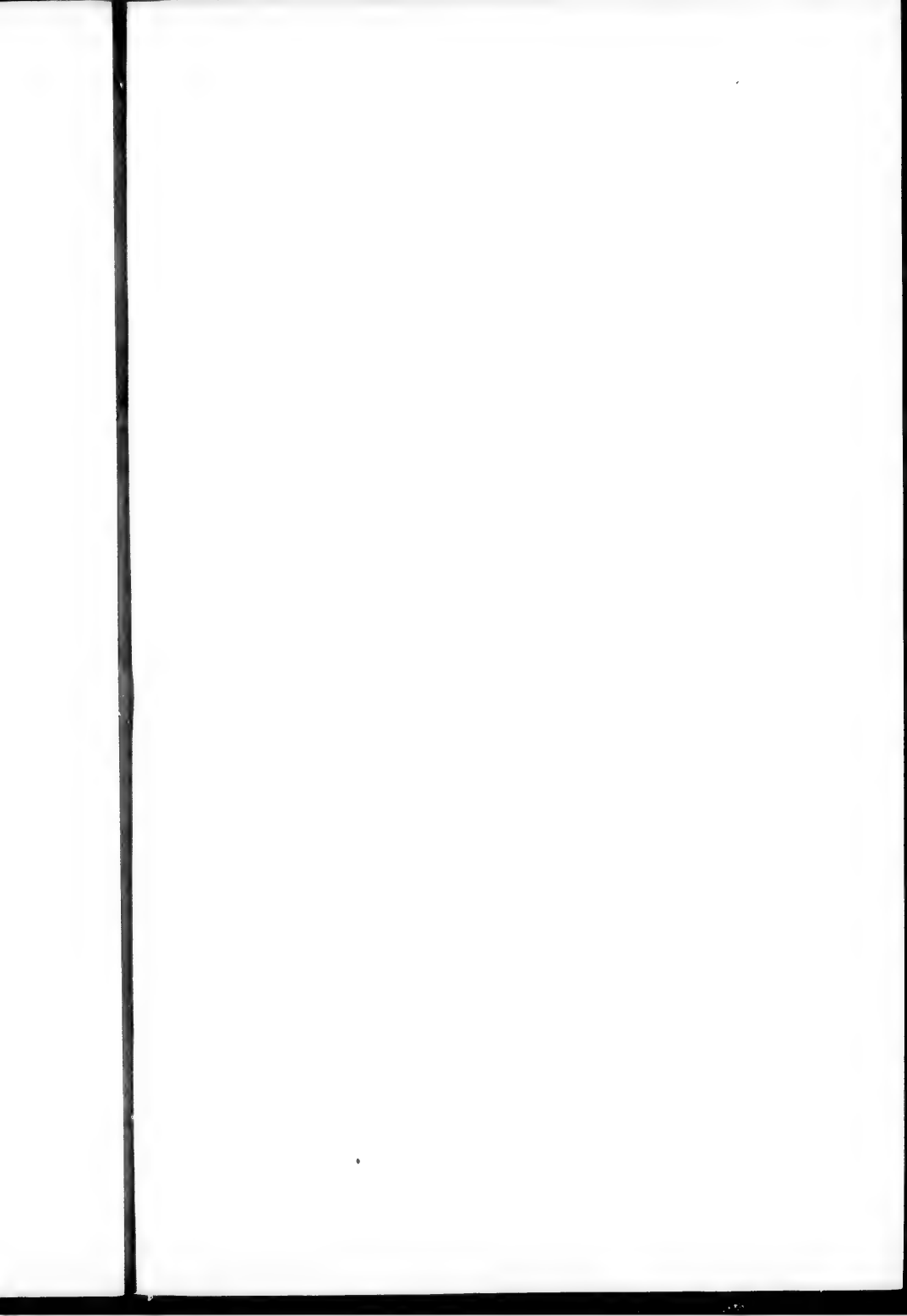
The Russian Government gave to the Duke of Wellington a Memorandum, which concluded as follows:—

"Consequently, the Emperor has charged his Cabinet to declare to the Duke of Wellington (such declaration not to prejudice his rights in any way if it be not accepted) that he is ready to fix, by means of friendly negotiation, and on the basis of mutual accommodation, the degrees of latitude and longitude which the two Powers shall regard as the utmost limits of their possessions and of their establishments on the north-west coast of America.

"His Imperial Majesty is pleased to believe that this negotiation can be completed without difficulty, to the mutual satisfaction of the two States; and the Cabinet of Russia can, from this moment, assure the Duke of Wellington that the measures of precaution and superintendence which will then be taken on the Russian part of the coast of America will be entirely in conformity with the rights derived from sovereignty and with the established customs of nations, and that there will be no possibility of legitimate cause of complaint against them."

To this proposition the Duke, on behalf of Great Britain, promptly objected, because it recited an assumption of "exclusive sovereignty"





in North America, as well as an exclusive authority over the sea.

Finally, on the 29th November, 1822, he reports to Mr. G. Canning the Memoranda are withdrawn, and that the Emperor of Russia is ready to negotiate upon "the whole question of the Emperor's claim in North America." British Case, Appendix, vol. ii, p. 16.

The British Case proves that the object of the Ukase of 1821 was "to extend territorial jurisdiction over the north-west coast and islands, and to prohibit the trade of foreigners, rather than to protect any existing or prospective fishery," as is indicated by Regulation No. 70 of the Russian-American Company. British Case, p. 39.

M. de Poletica, the Russian Minister at Washington, further explains the motive and purpose of the Ukase of 1821, in his letter dated the 28th February, 1822, as referred to in the British Case. Ibid., and Appendix II, Part II, No. 1.

M. de Poletica said that Russia's aim in this Ukase was to acquire a "vast North American territory." British Case, p. 40.

Both the United States' and the British Governments, upon receiving communication of the Ukase of 1821, "immediately objected both to the extension of the territorial claim and to the assertion of maritime jurisdiction."

(B.)

United States' Case, p. 35, Appendix I, 12.

b (1.) That by the Ukase of 1799 Russia claimed the exclusive right to all products of the chase and commerce north of 55°.

Ibid., p. 49.

b (2.) That the Ukase of 1799, which set forth a claim of exclusive Russian jurisdiction as far as latitude 55°, called for no protest from any foreign Powers.

British Case, p. 27. Ukase of Paul.

As stated in the British Case, the Ukase of Paul granted exclusive rights only as against Russian subjects.

United States' Case, p. 34.

This is even evident from the United States' Case, where it establishes that the intention was to create a monopoly in favour of the Company as against the increasing trade Associations, which developed soon after the discoveries of 1791, and whose rivalry became disastrous.

If it is intended to insist that the Russian Company gave no positive permission, it may be true and is immaterial. Or if it is meant that in some *official records the right is claimed* to prevent such visits and control the sea, it may be equally true and equally immaterial.

The Ukase was purely domestic, and confined to the land. The language and the application so indicate.

Vivien de St. Martin, an authority referred to in the United States' Case, says:—

Ibid., p. 52.

"Divers maritime and colonization commercial Companies were formed up to 8th July, 1799, when the Emperor Paul united them all under the name of the Imperial Russian-American Fur Company."

Ibid., pp. 49-56.

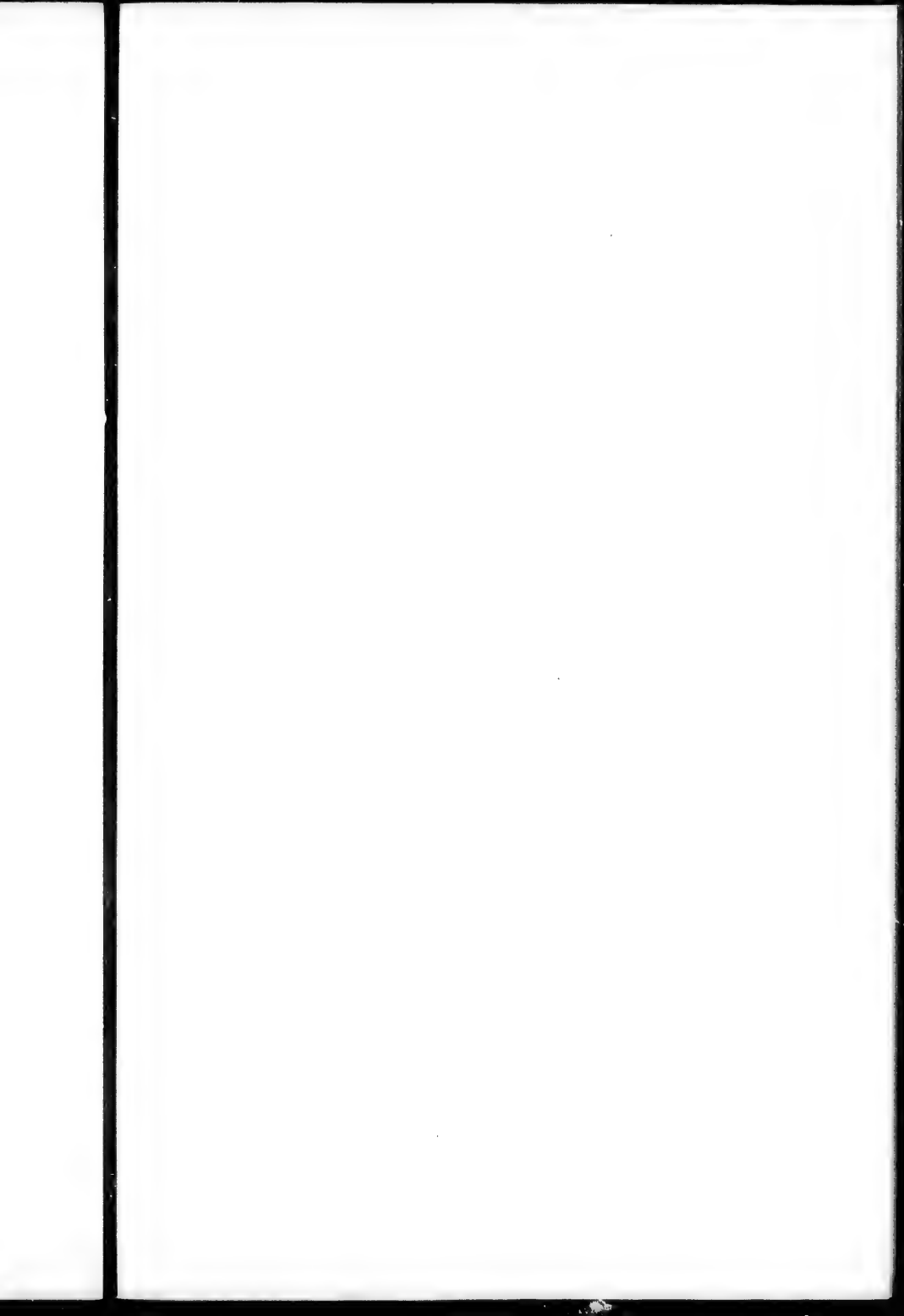
Mr. Middleton's explanation on behalf of the United States, in 1824, of the *domestic* character of the Ukase of Paul, and his reason for the absence of any notification thereof, fully meet the statements now put forward by the United States.

British Case, pp. 25-28.

Writing to Mr. Adams, the Secretary of State of the United States, on the 7th (19th) April, 1824, he said:—

Ibid., p. 28.

"The confusion prevailing in Europe in 1799, permitted Russia (who alone seems to have kept her attention fixed upon this interest during that period) to take a decided step towards the monopoly of this trade, by the Ukase of that date which trespassed upon the acknowledged rights of Spain; but at that moment the Emperor Paul had declared war against that country as being an ally of



France. This Ukase, which is, in its *form*, an act purely domestic, was never notified to any foreign State with injunction to respect its provisions. Accordingly, it appears to have been passed over unobserved by foreign Powers, and it remained without execution in so far as it militated against their rights."

Mr. Adams, dealing with the Ukase of 1779, also wrote to Mr. Middleton:—

" . . . In M. Poletica's letter of the 28th February, 1822, to me, he says that when the Emperor Paul I granted to the present American Company its first Charter, in 1799, he gave it *exclusive possession* of the north-west coast of America, which belonged to Russia, from the 55th degree of north latitude to Behring Strait.

"In his letter of the 2nd April, 1822, he says that the Charter to the Russian-American Company, in 1799, was merely conceding to them a part of the sovereignty, or rather certain *exclusive privileges of commerce*.

"This is the most correct view of the subject. The Emperor Paul granted to the Russian-American Company certain exclusive privileges of commerce—exclusive with reference to other Russian subjects; but Russia had never before asserted a right of sovereignty over any part of the North American continent; and, in 1799, the people of the United States had been at least for twelve years in the constant and uninterrupted enjoyment of a profitable trade with the natives of that very coast, of which the Ukase of the Emperor Paul could not deprive them. . . ."

The letter of the 31st March, 1821, even as set out in the Case of the United States, indicates no more than that the Russian Company believed their monopoly was to be secured at last by the Ukase of 1821, and all competition destroyed.

The "new privileges" which were to be followed by "definite instructions how to deal with foreigners who ventured to cross the limits," &c., referred to the Ukase of 1821, which was anticipated.

The United States' Case relies on a quotation from this letter to show that the Ukase of 1821 was merely declaratory of pre-existing claims of exclusive jurisdiction as to trade in Behring Sea, which had been enforced for many years.

A careful translation of the letter in question proves that the foundation for such an assertion cannot be upheld.

Two translations of the original appear below:—

(As in United States' Case.)

" . . . The principles involved in this action of the Government you must also observe in dealing with

British Case, vol. ii,
Part II, pp. 4, 5.

United States'
Case, p. 48.

Ibid., pp. 48, 49.

(British translation.)

" . . . It will be your duty to act upon this order of the Government, and to do your best to prevent foreigners

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from visiting our Colonies. As soon as our new Charter, which has already been drawn up at the Ministry, and is only awaiting the return of His Imperial Majesty, has been sanctioned, we shall have Regulations showing us how to deal with foreigners who may cross the limit of our jurisdiction, and then it will be your duty to put these Regulations in force."

United States' Case, Appendix, vol. I, p. 65.

(British translation.)

"Last year no Government vessel was sent round the world to protect our Colonies; now two are being sent out under the command respectively of Tulubief and Filatof, the former being the senior officer; and we are about to send out to you the "Rurik," under the command of Lieutenant Klotchkoff. The brig is to return home after visiting the Colonies. You will get all the European news from the papers we are sending out to you by the "Rurik," and we shall send you another letter by her."

foreigners who may visit our Colonies, using all the force at your command to drive them from our waters. Together with our new privileges, which have already been promulgated by the Minister, and which are only awaiting the return of our Monarch, we shall also receive definite instructions how to deal with foreigners who venture to cross the limits of possessions acquired long ago through Russian enterprise and valour."

In the Appendix to the United States' Case the letter is translated in full. It is necessary to correct further errors which there appear. They are as follows:—

(As in United States' Case.)

" . . . During the present year no naval vessel has been dispatched around the world for the protection of our Colonies, but now two ships are being fitted out, to the command of which Tulubief and Filatof have been appointed, the former being in charge of the squadron. You will, therefore have an ample force patrolling our waters and protecting our interests. In addition we send you the brig "Rurik," commanded by Master Klotchkof. The brig is to return to us after cruising in colonial waters. In the accompanying newspapers and journals forwarded by the "Rurik," with the additional despatches, you will learn the state of affairs in Europe and in other countries."

The "claims" of exclusive jurisdiction leading to this Ukase are thus dealt with in the British Case:—

British Case, p. 37.

"Long before 1821 the Company had succeeded fully in getting rid of its Russian rivals. Domestic competition had, in fact, ceased, and the most serious drawback to the success of the Company consisted in the competition from abroad.

Ibid.

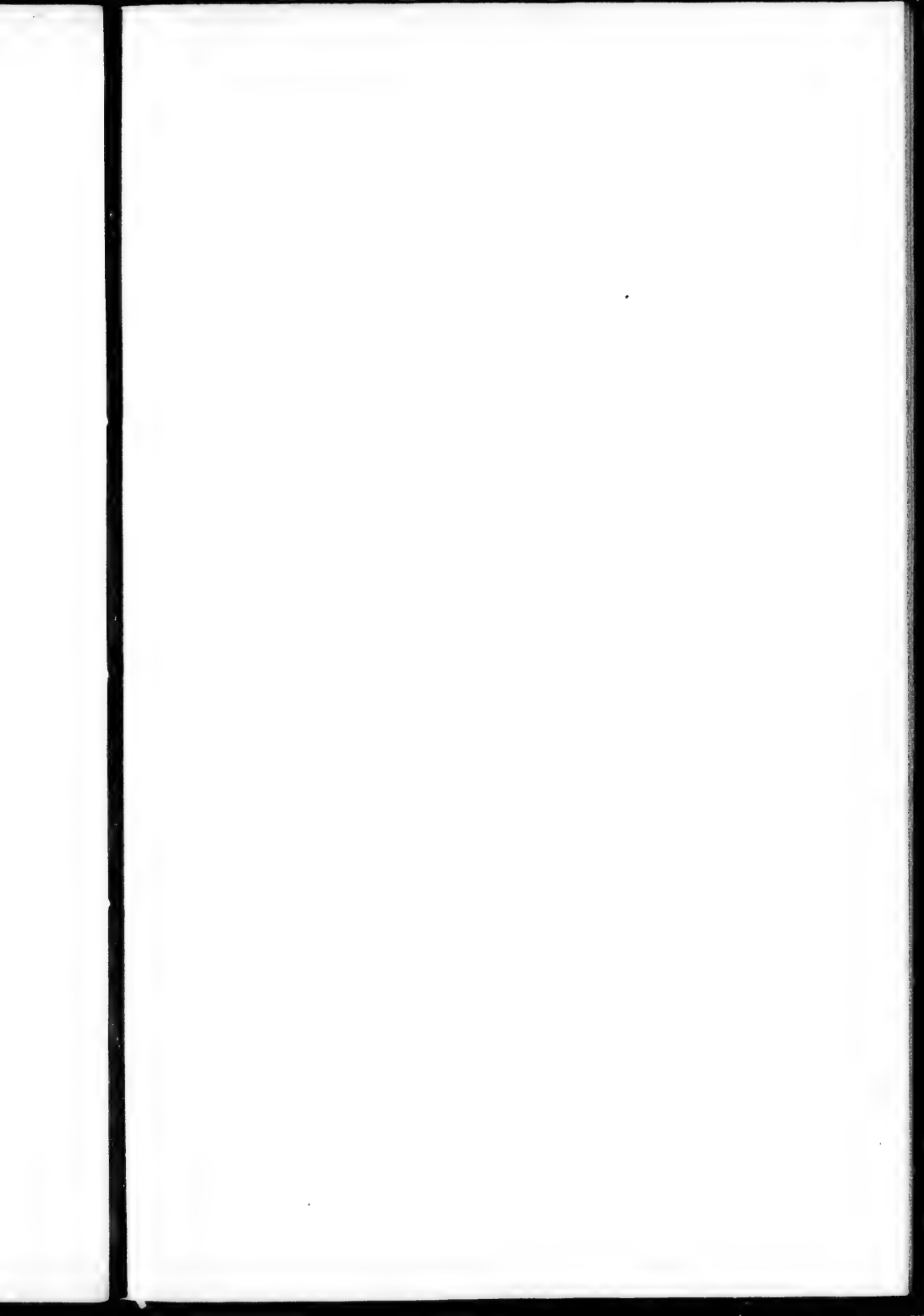
"The difficulties resulting to the Company on account of foreign competition appear prominently in the complaints made by its agents at the time, and the new claim of the right to exclude foreigners from trade was embodied in the Ukase of 1821."

Ibid., p. 28.

Baron de Nicolay, writing to Lord Londonderry in October 1821, explains that the purpose of the Ukase of 1821 was to take "severe measures" against the intrigues of "smugglers" and "adventurers" on the coast, who not only "engaged in fraudulent commerce," but also "betrayed a hostile tendency."

[843]

E



On the face of the Ukase is stated the justification therefor, as follows:—

"And finding that the principal cause of these difficulties [*i.e.*, impediments caused by secret and illicit traffic] is want of rules establishing the boundaries for navigation along these coasts . . ."

British Case, p. 39.

The communication between the Board of Administration of the Russian-American Company and their Chief Manager at Sitka, dated the 20th September, 1821, and a letter of the 28th February, 1822, from a member to the Chief Manager, are now for the first time produced.

United States Case, p. 41.

Ibid., vol. i, p. 59.

Ibid., p. 42; and vol. i, p. 61.

As quoted in the Case, the above letters go no further than to show that the Russian-American Company expected to gain much from the consequences of the Ukase of 1821. If the Ukase of 1790 was for the purposes claimed in the United States' Case, the Ukase of 1821 was hardly necessary.

In view of the abandonment of the Ukase these documents, it is submitted, are irrelevant to the points involved, touching the question of right between the nations concerned.

Had the Ukase been confirmed, undoubtedly the privileges they hoped to enjoy would have been secured.

The letter of the 28th February, on which *Ibid.* reliance is placed, when read in full, as in the Appendix, simply shows that shipments of seals previously made had not been sold. The inference is clear that, with the exclusive privileges under the Ukase, the annual number of seals to be killed could be greatly reduced, with a corresponding increase in the price for the seals sold, which would, as the Chief Manager says, yield an abundant harvest in the future.

But the paragraph in this letter which appears in the United States' Case is not found in the original. *United States' Case, p. 42.*

A portion of the letter of the 20th September, 1821, is omitted in the text of the United States' Case.

The following paragraph, however, appears:—

"In your dealings with foreigners you will act especially under the provisions of the following paragraphs contained in the new Regulations: 35, 39, 41, 43, 44, 46-49, 51, 52, 53, 55-60, 62, 64, 67-70. These paragraphs bear plainly

upon the points in dispute between us and other seafaring nations."

A reference to the paragraphs which are said to "bear specially upon the points in dispute between us and other seafaring nations" fails to disclose instructions which go further than prohibition of trade with the islands where the fur-bearing animals were got.

British Case,
Appendix, vol. i,
p. 11.

The paragraphs mentioned in the new Regulations are found only in the Regulations of the Russian-American Fur Company.

An important statement in this letter should not be overlooked.

The "precious act" was, of course, the Ukase of 1821, and the letter establishes that the Board of Administration of the Russian-American Company regarded this Ukase as establishing "a new position."

This sustains the distinction, commented upon in the British Case, between the effect of the Ukase of 1799 and the Ukase of 1821.

But a careful translation of this document, upon which the position of the United States in this chapter is based, shows that the language in the text and just considered is nowhere to be found in the originals which appear at the end of vol. i.

United States'
Case, p. 41,
foot-note.
Appendix.

In the Appendix to this Counter-Case the translation given in the United States' Case, and the translation made for the British Counter-Case are given side by side.

Reading the British translation together with the Regulations of the Russian-American Company, it is clear that the letters related to the domestic affairs only of the Company, except so far as in paragraphs 60, 62, and 70.

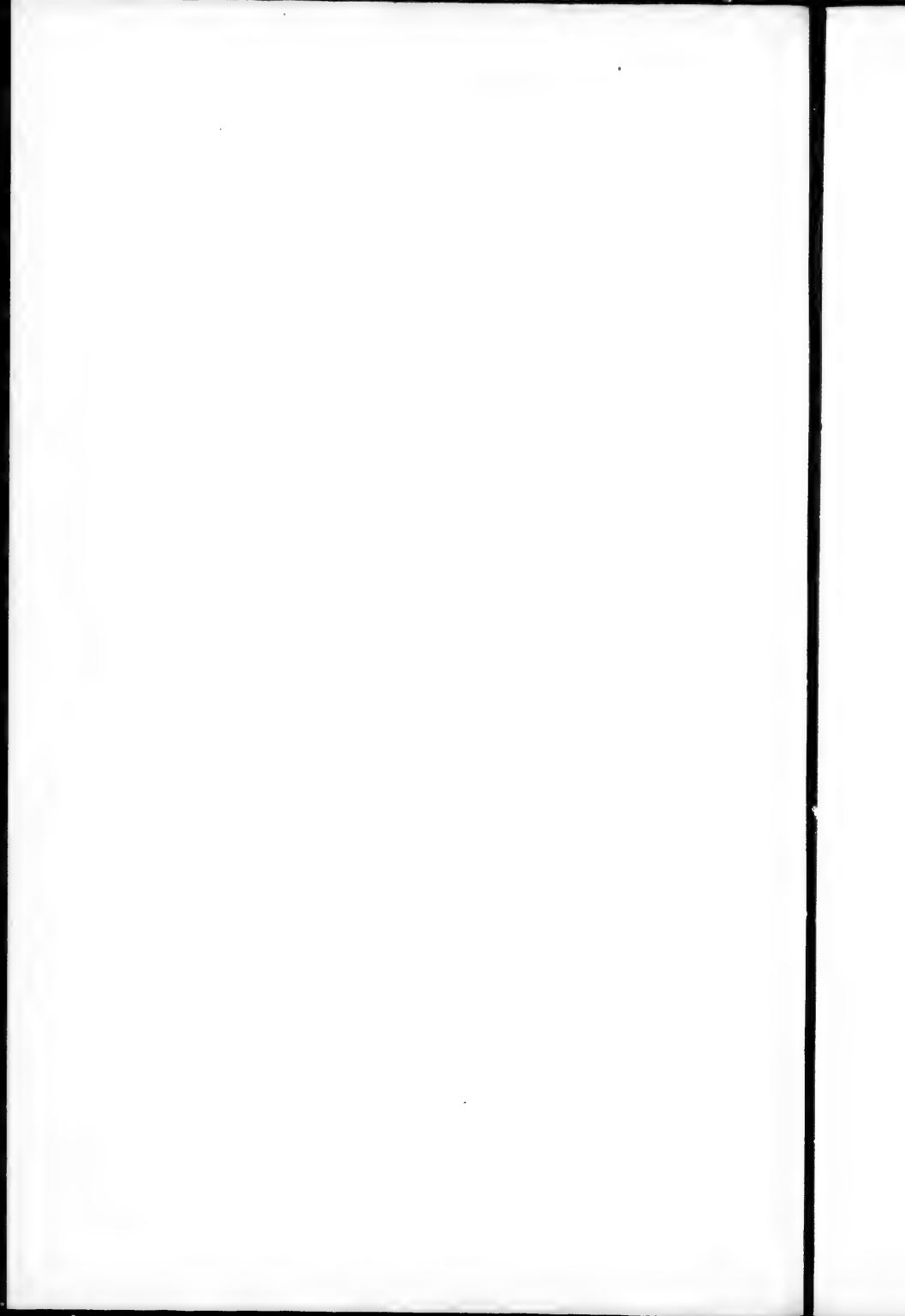
These Regulations are as follow:—

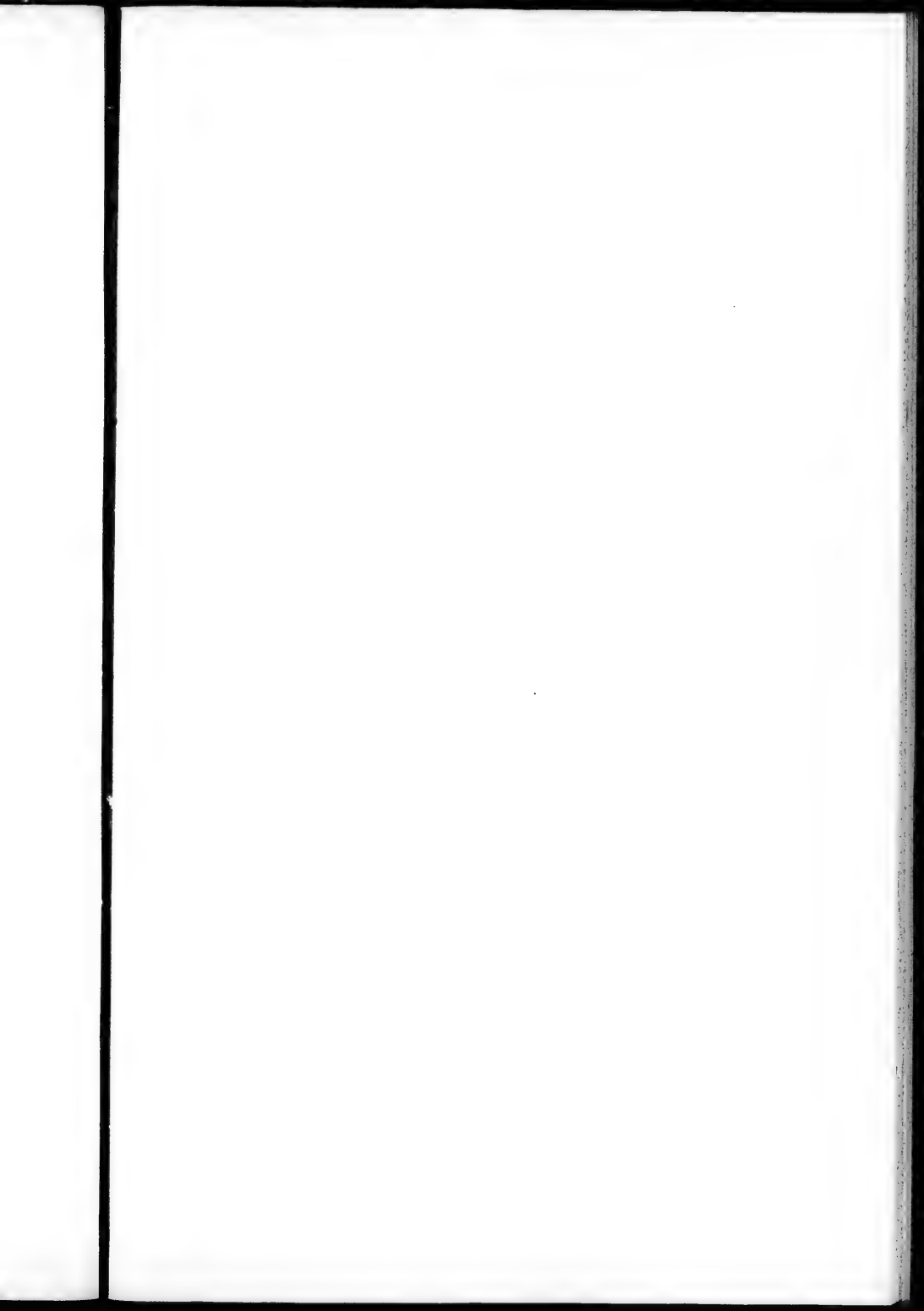
British Case,
Appendix, vol. ii,
p. 2.

Ibid., vol. i, p. 13.

"60. In return for the confidence reposed in the Company by the Government in granting to it so vast an extent of territory on the frontier of the Empire, the Company is bound to abstain from any action which might cause an interruption of friendly relations with neighbouring States. The Company must be careful to observe all the Rules laid down by foreign Powers for the guidance of their subjects in their relations with foreigners, as well as all the provisions of the Treaties in force between Russia and foreign countries, especially those relating to the Chinese Empire.

"62. For the guidance of the Company in the matter of





the steps to be taken in regard to foreign ships entering the colonial waters, in exceptional cases, or in contravention of the privileges granted to it by the Emperor, special Rules have been drawn up, entitled, 'Regulation on the subject of the Limits of Navigation and Communication by Sea along the shores of Eastern Siberia, North-Western America, and the Aleutian and Kurile Islands.'

"70. A ship of war, after visiting not only the Company's Settlements, but also, and more particularly, the channels which foreign merchant-vessels are likely to frequent for the purpose of illicit trading with the natives, will return to winter whenever the Government orders it; but if the Chief Manager of the Colonies considers it necessary for a ship of war to winter in the Colonies, the Commander will receive orders accordingly.

"The Commanders of ships of war will receive orders to capture all foreign ships found in Russian waters.

"(The Naval Regulation prohibiting the officers and crews of men-of-war from engaging in trade will be strictly enforced.)"

They afford further evidence that the object of the Ukase was to extend territorial jurisdiction over the north-west coast and islands, and to prohibit the trade of foreigners, rather than to protect any existing or prospective fishery. British Case, p. 39.

The rules referred to in paragraph 62 of the Regulations above prohibit foreign vessels "landing" on the coasts and islands of Russia in Behring Sea, or "approaching" them within 100 miles. The vessel and cargo to be confiscated for transgression. Appendix, vol. i, p. 13.
Rule 2.

This prohibition extended from Behring Strait to 50 degrees of north latitude on the American Continent.

In none of the Rules or Regulations is there a reference to sealing or to seal fisheries, while there is frequent allusion made to trading vessels and to their cargoes.

The letter of the 28th February goes as rendered in the United States' Case to show that the fur-seal industry—which had been enjoyed by admittedly precarious tenure previously—would have been completely secured had the Ukase of 1821 been upheld.

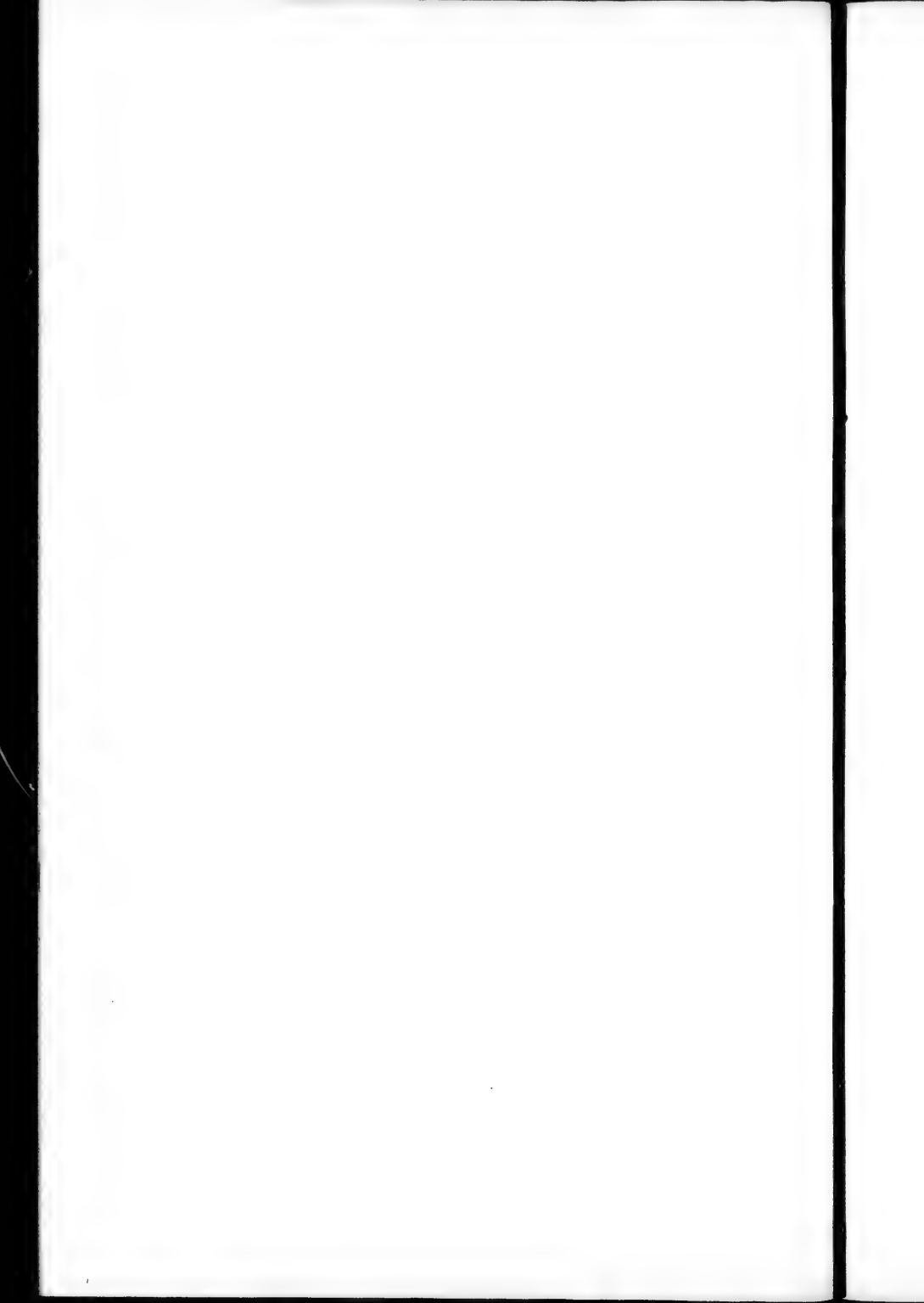
It is shown in the British Case, with reference to the Ukase of 1799, that:—

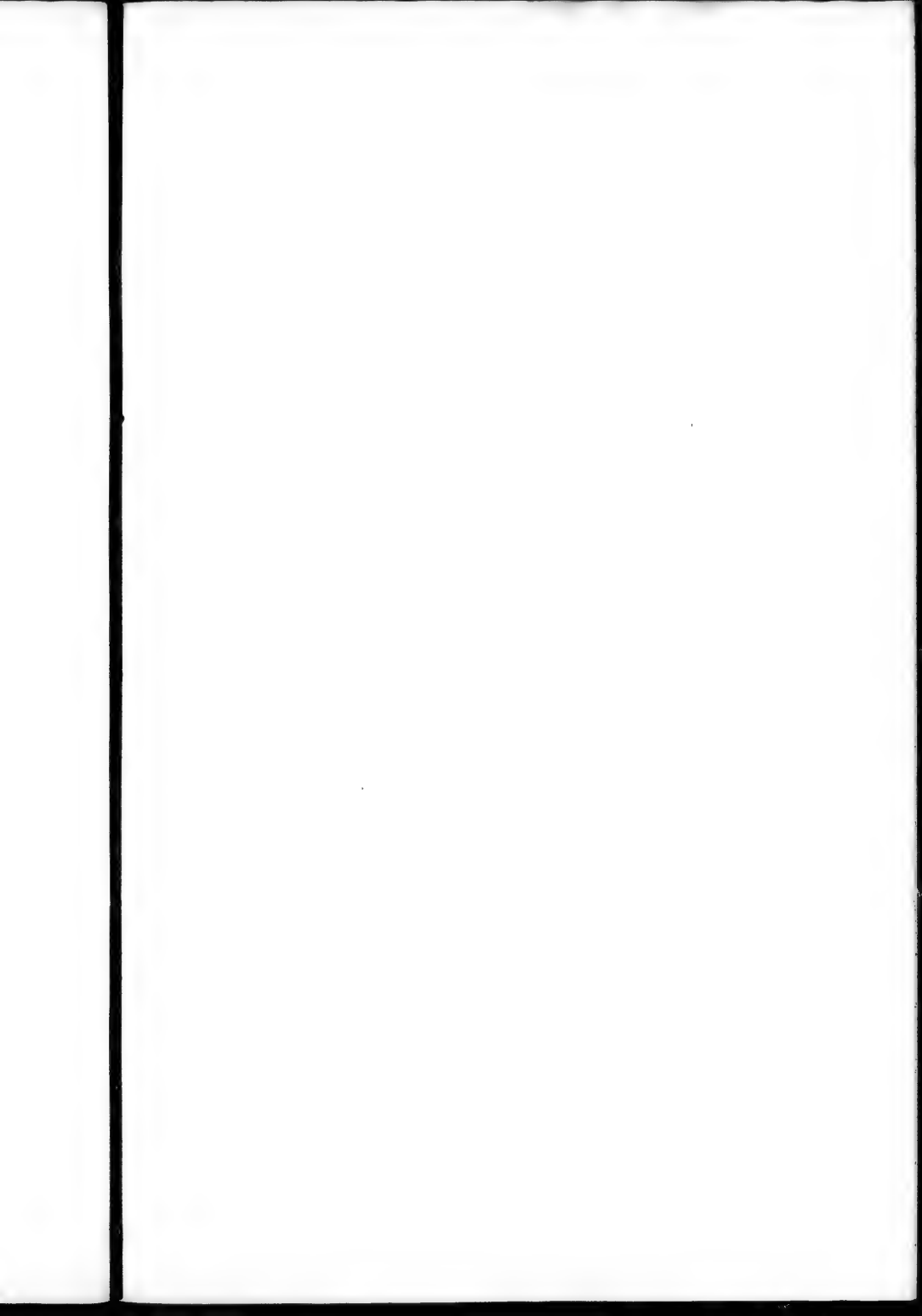
"The Ukase in no way claimed any exclusive jurisdiction over the sea, nor were any measures taken under it to restrict the commerce, navigation, or fishery of the subjects of foreign nations, and this although, within the very area covered by the Ukase, as has already been British Case, p. 28.

shown by the facts stated, vessels of various nations had been navigating and trading;"

and, with reference to the Ukase of 1821, that—

British Case, p. 38. "By this Ukase Russia first attempted to assert, as against other nations, exclusive jurisdiction or rights over the shores of America and Asia, bounding the Pacific Ocean, certain islands therein, and over a portion of the Pacific Ocean, including what is now known as Behring Sea."





(C.)

(c) 1. That after the Ukase of 1799 the authorities of the Russian Company, acting under the sanction of the Russian Government, did not permit foreign vessels to visit Behring Sea. United States Case, p. 42.

(c) 2. A considerable amount of correspondence resulted, which illustrates the complete control which Russia claimed and actually exercised over Behring Sea prior to 1821. Ibid., p. 45.

(c) 3. There is no record that hunting or trading had ever been carried on within Behring Sea. Ibid., p. 51.

(c) 4. That prior and up to the date of the Treaties of 1824-25 Russia did assert and exercise exclusive rights of commerce, hunting, and fishing in all the waters of Behring Sea. Ibid., p. 69.

The statement that Russia did not, after the Ukase of 1799, "permit foreign vessels to visit Behring Sea," is unsupported by authority. Ibid., p. 42.

The Ukase has been shown to have been regarded by the United States as purely domestic.

Not an instance of any interference with vessels in this sea by Russia between 1799 and 1824 or 1825 can be found.

While no regular record of voyages exists, the United States' ship "Beaver" is known to have been at the Pribyloff Islands in 1812. British Case, p. 31.

The statement in effect that *exploration, trade, colonization, and competition* were confined during last part of the 18th and early part of the 19th century to the coast between Prince William Sound and the mouth of the Columbia is not and cannot be supported. United States' Case, p. 26.

The British Case gives evidence in chronological order in refutation of this statement.

A reference to some of the cases is reproduced. It must be remembered that it was not until 1741 that the American coast of Behring Sea was discovered. British Case, p. 14.

Hunters and traders followed, and Behring Island and various islands of the Aleutian chain were visited.

In 1764 to 1768 Synd, a lieutenant of the Russian navy, made an expedition along the coast to Behring Strait. Ibid., p. 15.

From 1769 to 1779 single traders and small

Companies continued the traffic with the islands.

The United States' Case furnishes a contradiction to the statement so far as explorations are concerned.

United States' Case, p. 21.

In 1684 a Russian ship sailed from the Arctic Ocean through Behring Strait to Kamchatka.

Behring sailed from Kamchatka in 1728; discovered St. Lawrence Island, and passed through the strait that bears his name.

Another part of Behring's expedition reached the continent at latitude 65°, near the mouth of the Yukon River.

In 1741 Behring made a second expedition, in two parts, both of which reached America. He landed at the Shumagin Islands, sighted a large number of the Aleutian Islands, and was wrecked on the Commander Islands, dying on Behring Island.

Ibid, p. 22.

The above led to numerous private expeditions, and one Bossof gathered 500,000 dollars' worth of furs on these islands between 1743 and 1749.

The voyages at this time were numerous, and indicate great activity throughout the Aleutian chain, island after island being discovered.

About this time several navigators under Russian Imperial authority made further expeditions into Behring Sea, and visited various parts of the coasts.

Ibid, pp. 22-24.

In 1786 the Pribyloff Islands were discovered by Gerassim Pribilof, who had navigated these regions for five years.

Ibid., pp. 24-29.

In 1778 Captain Cook, "in co-operation with an expedition sent by the British Admiralty," passed into Behring Sea, and sailed along the eastern shore as far as Behring Strait, giving names to places along the coast—Bristol Bay, Norton Sound, &c. "He confirmed in the strongest manner the early Russian discoveries" along this coast.

Ibid., p. 24.

In 1791 an expedition, planned by Catherine II., passed from the Aleutian Islands to the northern parts of Behring Sea, including St. Lawrence Island and Cape Rodney.

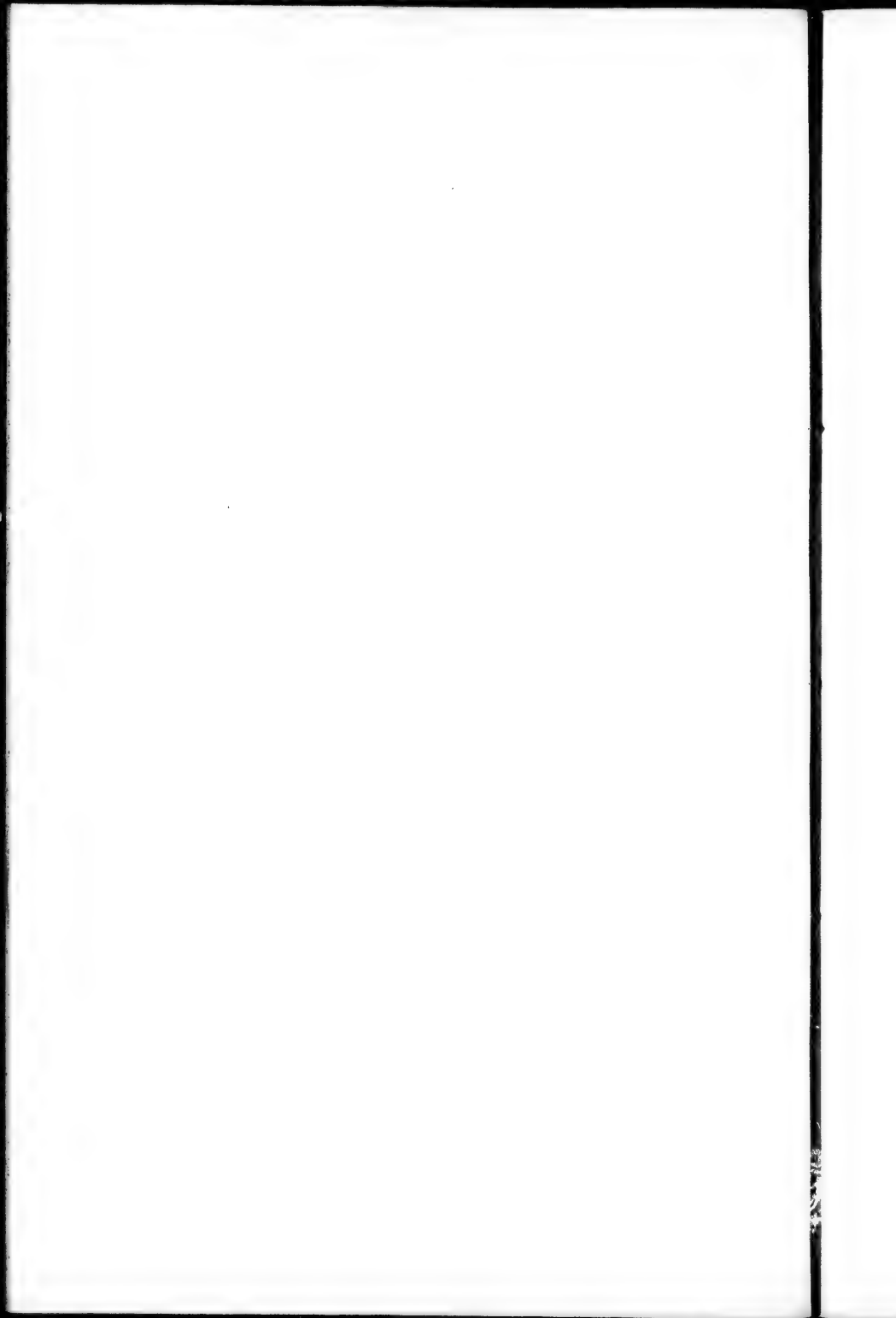
Other expeditions followed at various times.

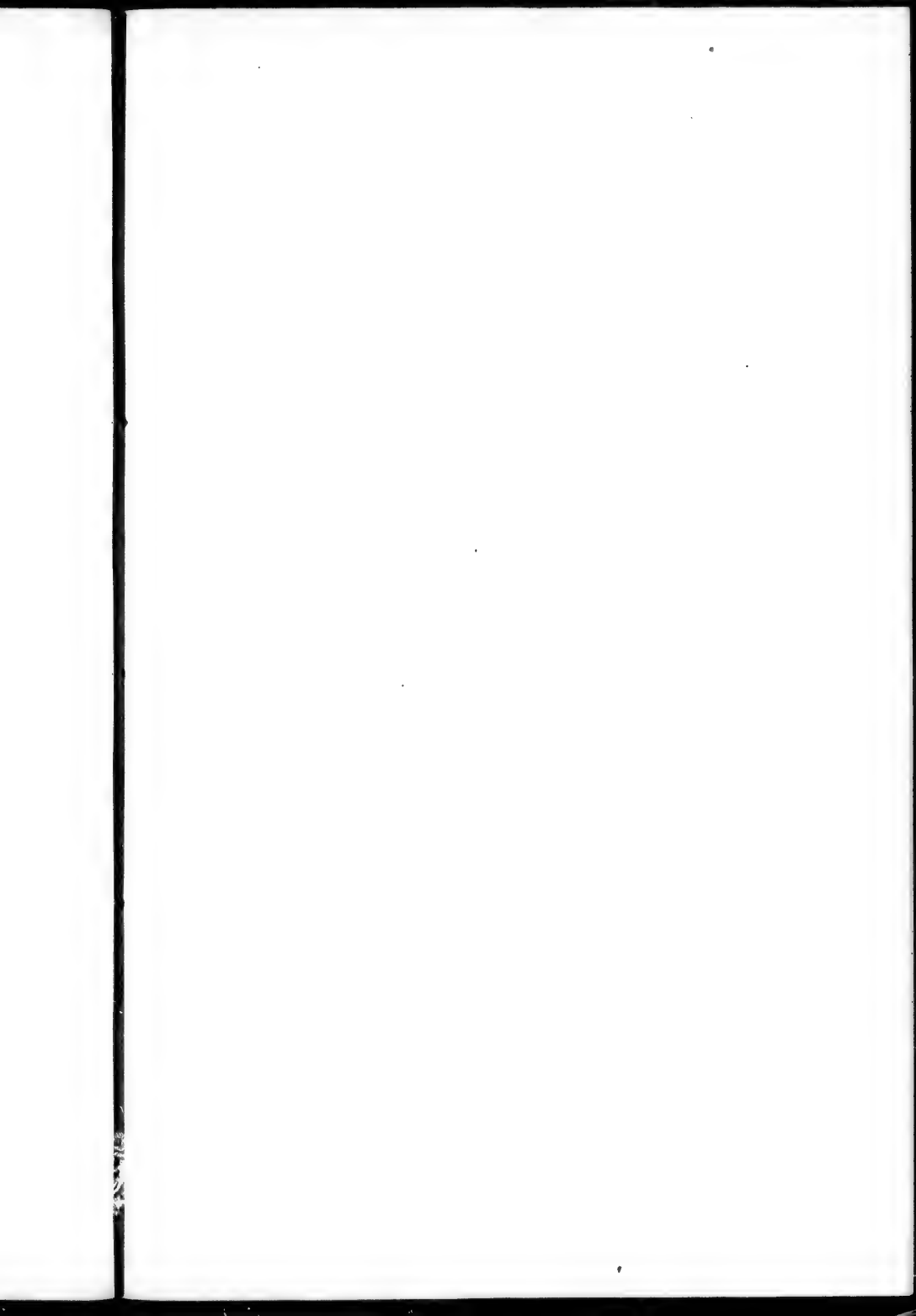
Ibid., p. 33.

The shores and adjacent islands of the continent south of latitude 60° were the subject of conflicting claims between Russia, Great Britain, Spain, and the United States.

Ibid., p. 34.

The Russian-American Company soon after





the discoveries of 1741 "began to develop a lucrative fur-trade in the Aleutian Islands and Behring Sea."

Foreign vessels certainly visited Behring Sea before 1799, and continued to do so afterwards.

In 1778 Captain Cook, sent by the English Government, with two vessels explored the coast from about latitude 44° N. to Icy Cape, beyond Behring Strait, taking possession of the coast. United States' Case, p. 34.

An English vessel, the "Lark," sailed for Copper Island in 1786. British Case, p. 16.

In the same year Portlock and Dixon and Meares traded and explored far to the northward, and Portlock and Dixon visited Cook's Inlet. Ibid. p. 17.

The Russian Pribyloff discovered the islands that bear his name in 1786.

From 1787 to 1791 several voyages were made by Billings' Russian scientific exploring expedition in the Behring Sea region. Ibid.

In 1790 Fidalgo examined the north-west coast, including Cook Inlet. Ibid., p. 19.

This year a Swedish cruizer visited the Aleutian Islands. Ibid.

Douglas was in Cook Inlet in 1791.

In 1793 Vancouver, dispatched by the British Government, explored all the remaining inlets on the north-west coast. Ibid.

In 1794 Vancouver surveyed Cook Inlet. Ibid., p. 20.

In 1806 the Russian envoy visited the Pribyloff Islands, and reported that the traders in ships from Boston were undermining the trade with China. Ibid., p. 30.

In 1812 the United States' ship "Beaver" disposed of her cargo to Baranoff at Sitka, and was then sent to the Pribyloff Islands for fur-seal skins in payment. Ibid., p. 31.

In 1814, Captain Bennett (United States) sold two vessels with their cargoes to Baranoff, and took fur-seal skins from the Pribyloff Islands in payment. Ibid.

In 1818 and 1821 expeditions were dispatched by the British Government in search of a north-west passage from the Atlantic to the Pacific, and in 1824 and 1825 Parry, Beechey, and Franklin were engaged in the same quest, with a rendezvous at Kotzebue Sound. Ibid., p. 32.

In 1819 the United States' traders obtained most of the trade with the Kolosh. Ibid.

In 1826 (July) Her Majesty's ship "Blossom" (Captain Beechey) sailed through Behring Sea into the Arctic Ocean. Ibid., p. 33.

United States' Case, p. 43.

The request of the Minister of Finance in 1820 and 1821 to the Minister of Marine for cruisers to protect the Company's interests do not suggest the exclusion of foreign vessels from the sea in question. On the contrary, they refer to the policy of colonial extension: "Vessels engaged in traffic or industry injurious to the interests of the Russian Company."

Ibid., vol. i, p. 49.

The abstract of the letter of the Minister of Finance, given in the Appendix to the United States' Case, shows more clearly that trade monopoly was the object of this request:—

"In view of the recent establishment of these Colonies, and of the absence of forces required to prevent such irregularities, and of the small number of Russians scattered over an area of nearly 4,000 versts, the Company finds it impossible to occupy all localities in sufficient number to prevent the foreigners from maintaining their illegitimate intercourse with the native inhabitants."

The letter suggests further instructions touching "foreign contrabandists."

The request in this communication is based expressly upon the testimony "of the Commanders of ships sailing in those regions," that United States' vessels were then carrying on a trade with the native inhabitants. It affords direct proof, so difficult to find generally, for obvious reasons, that previous to the 9th April, 1820, foreign vessels were navigating the waters of Behring Sea as far up the eastern coast of the Kamchatka Peninsula as 62° of north latitude, and on the west coast of this sea, called the "West Coast of North America," from 62° of north latitude to the Island of Ounalaska.

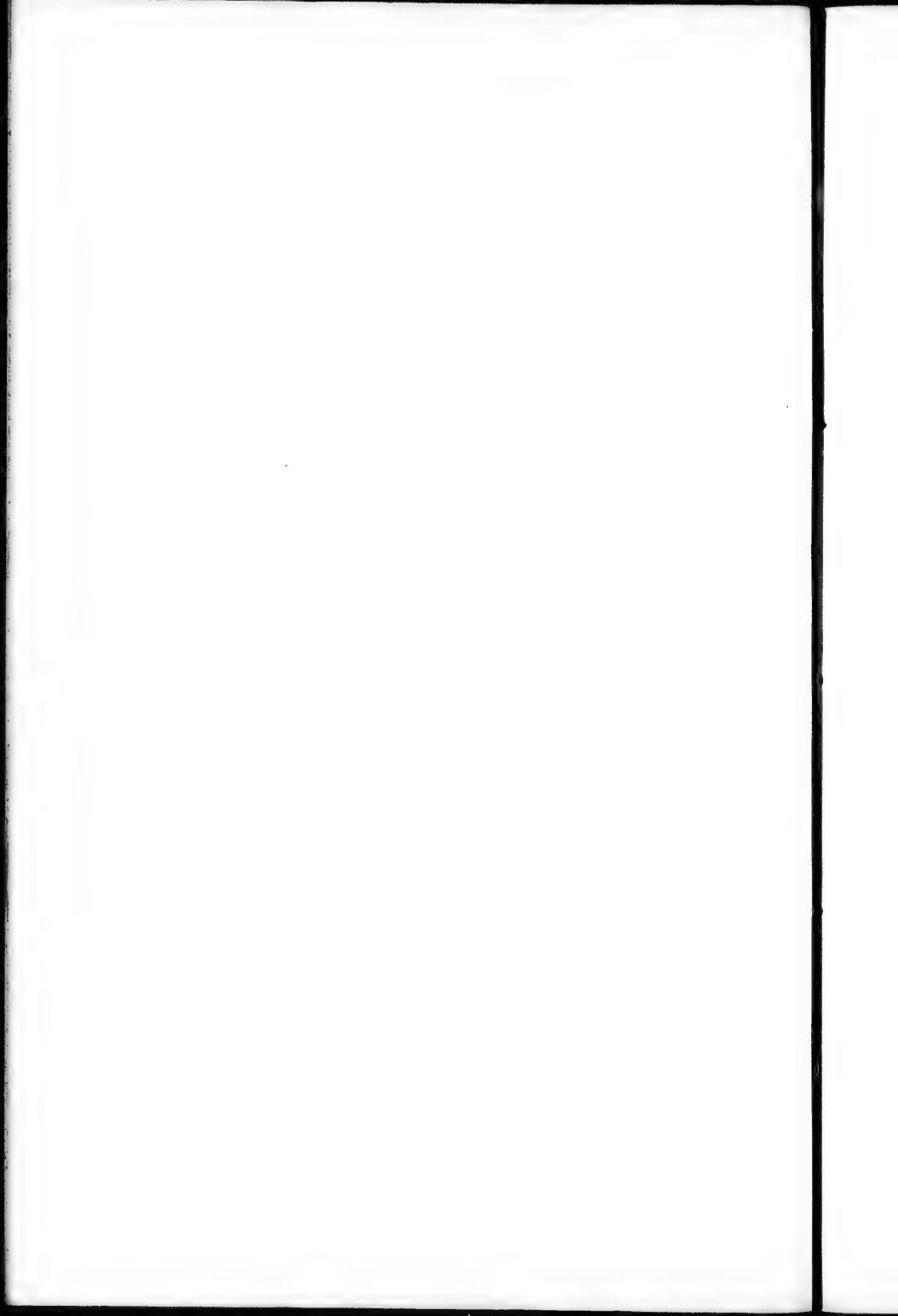
The United States rely on the following extract from the letter of the 9th April, 1820:—

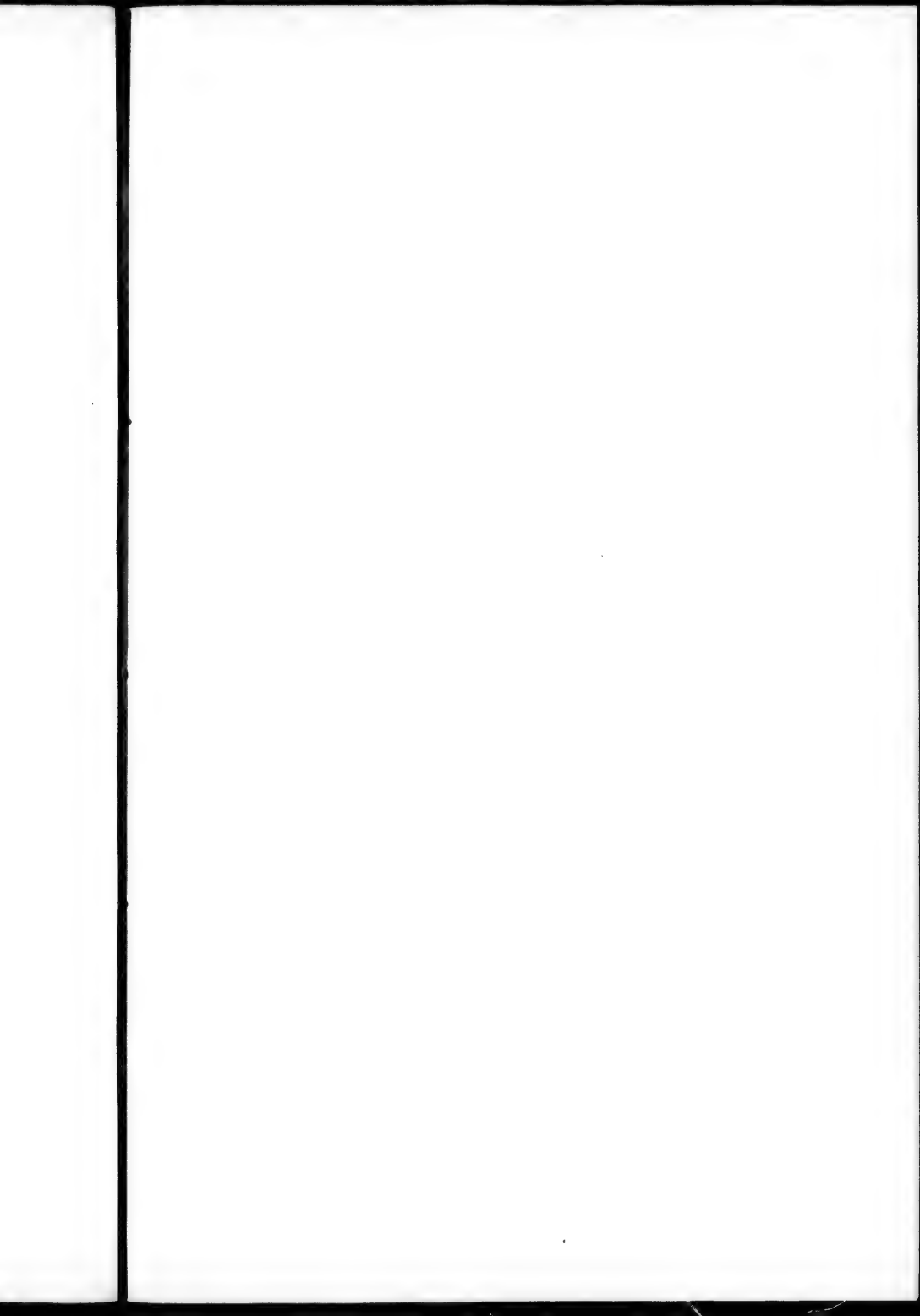
Ibid., p. 40.

"It appears of the utmost necessity for the preservation of our sovereignty in the north-western part of America and in the islands and waters situated between them to maintain there continuously two ships of the Imperial fleet."

And, again, in referring to the directions for the ships, it is said:—

"The other ships, however (sailing from Petropaulovsk), having examined the eastern coast of Kamchatka Peninsula up to 62° north latitude, and the west coast of America from this latitude to the Island of Unalaska and the intervening waters (Bering Sea), should proceed to Kadiak and from there to Sitka for the winter. The





object of the cruising of two of our armed vessels in the localities above mentioned is the protection of our Colonies and the exclusion of foreign vessels engaged in traffic or industry injurious to the interests of the Russian Company, as well as to those of the native inhabitants of those regions."

A more accurate translation of the Russian document destroys all ground for the argument of the United States upon this point.

The object and mission of the ships is thus described in the translation, which is given in the Appendix to this Counter-Case:—

"As the Colonies have only lately been founded, and as they do not possess sufficient forces to remedy these evils, a small number of Russians being scattered over an area of nearly 4,000 versts, the Company is unable as yet to occupy all points in such a manner as to prevent the Americans from continuing their forbidden intercourse with the islanders, or exercising their influence over them. Under these circumstances, considering that the interests of the Company, its foundation, and its objects are inseparably connected with the interests of the Government, it appears to be very necessary, if we are to keep our hold over our possessions in the north-western part of America, and on the islands situated in the ocean, that two ships of the Imperial navy should be kept constantly in that part of the world."

And, again—

"... The other ship, after inspecting the eastern shores of the Peninsula of Kamchatka as far as 52° north latitude, and the western shores of America from that meridian to the Island of Unalaska, will pay a visit to Kadiak, and thence proceed to Sitka, where she will winter.

"The object of the cruising of these two armed vessels in the localities mentioned above is the protection of our Colonies and the prevention of the prohibited intercourse between the foreign ships on the one hand, and the Company's establishments and the native inhabitants on the other."

The Case of the United States continues:—

"In the following year, 1821, two similar ships were to be dispatched, and in this manner two ships of war would always be present in the Colonies, and the Company would be assured of their protection."

United States' Case, p. 44.

The two translations of the original despatch touching this paragraph are as follows:—

(As in United States' Case.)

"In this manner two ships of war would always be present in the Colonies, and the Company would be

(British translation.)

"By this arrangement two armed vessels would always be present in the Colonies founded by the Company for

their protection of officers of opportunity the art of

their protection, and, apart from other advantages, the officers of the Imperial fleet would have an excellent opportunity of improving by practice their knowledge of the art of navigation."

assured of their protection. In addition to the other advantages resulting from this arrangement, it would afford a most excellent opportunity for the officers of the Imperial navy to perfect themselves by practice in the science of navigation."

Meares, however, shows why traders as a rule avoided the districts where there were Russian settlers.

In such places they were forestalled.

In his account of his visit to the Aleutian Islands, Meares gives his reasons for avoiding the Russian Settlements as follows:—

"Voyages made in 1786 and 1789 from China to North-west Coast of America," by John Meares.

"Finding it, however, impossible to go to the southward by the channel through which we came, on account of the strength of the current, we bore up and went to the northward, and having got as far to the eastward as Ounalashka, we were so fortunate as to meet with a strong north wind, which enabled us to get through between Unamah and Ounalashka. In these straits the current could not run less than 7 knots an hour, which caused a most tremendous sea.

"When we got round to the south side of the island, a Russian came off and piloted our ship into an harbour adjacent to that in which Captain Cook refitted.

"The Russians on these isles came from Ochotsk and Kamschatka in galleys of about 50 tons burthen, having from sixty to eighty men each. They heave their vessel up in some convenient place during their station here, which is for eight years, at the end of which time they are relieved by another party. They hunt the sea-otters and other animals whom Nature has clothed in furs. The natives of the different districts are also employed in the same occupation, and are obliged to give the fruits of their toil as a tribute to the Empress of Russia, to whom this trade exclusively belongs.

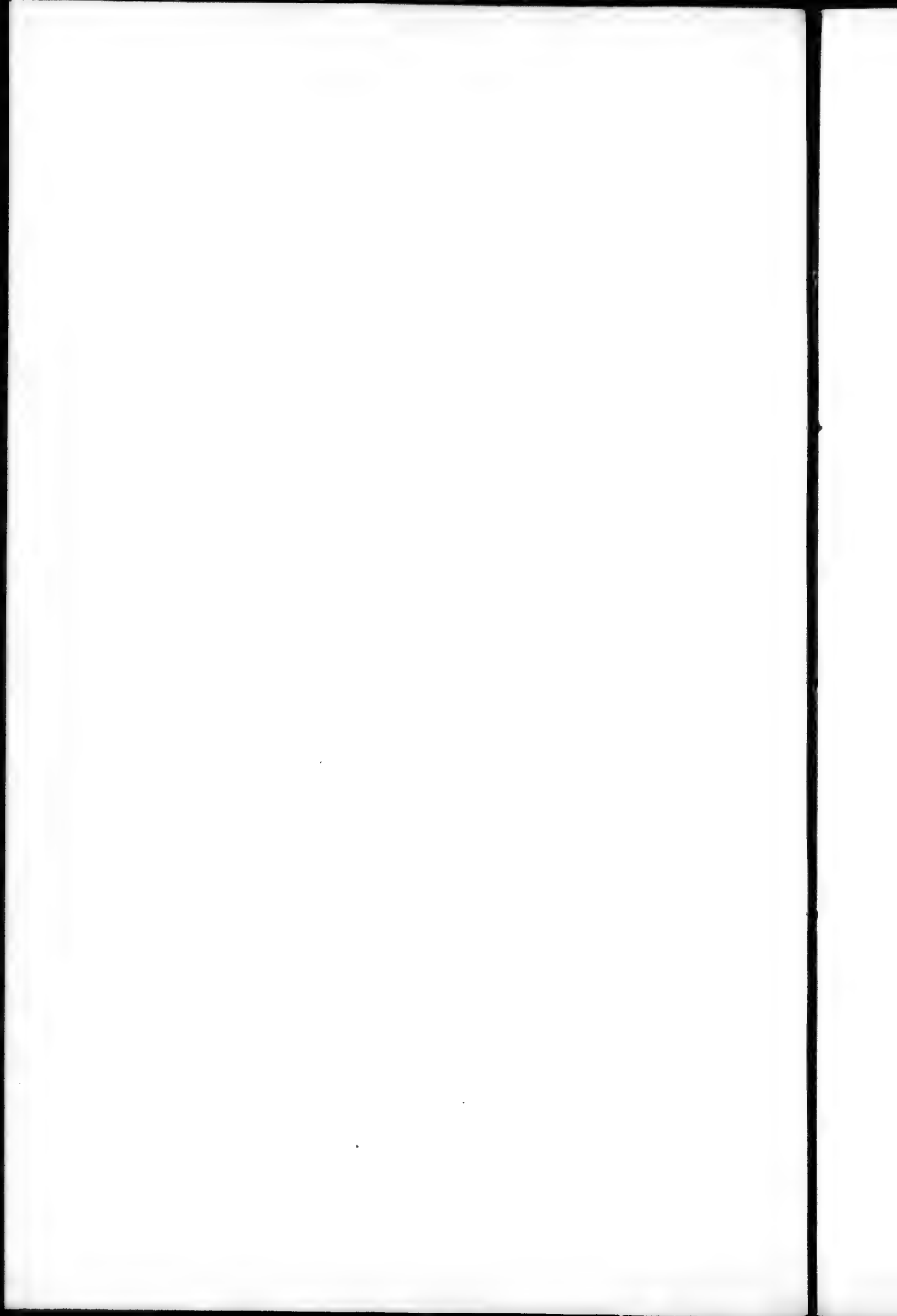
"The only animals on these islands are foxes, some of which are black, and whose skins are very valuable. While we lay here we endeavoured to engage the Russians to trade with us; but they set too high a value on their furs to dispose of them to us, at least for anything we had to give in return, more particularly as they expected to be relieved the following year. The harbour we entered is about 10 or 12 miles from that where Captain Cook refitted, and lies in the latitude of 54° 2' north, longitude 193° 25' east of Greenwich.

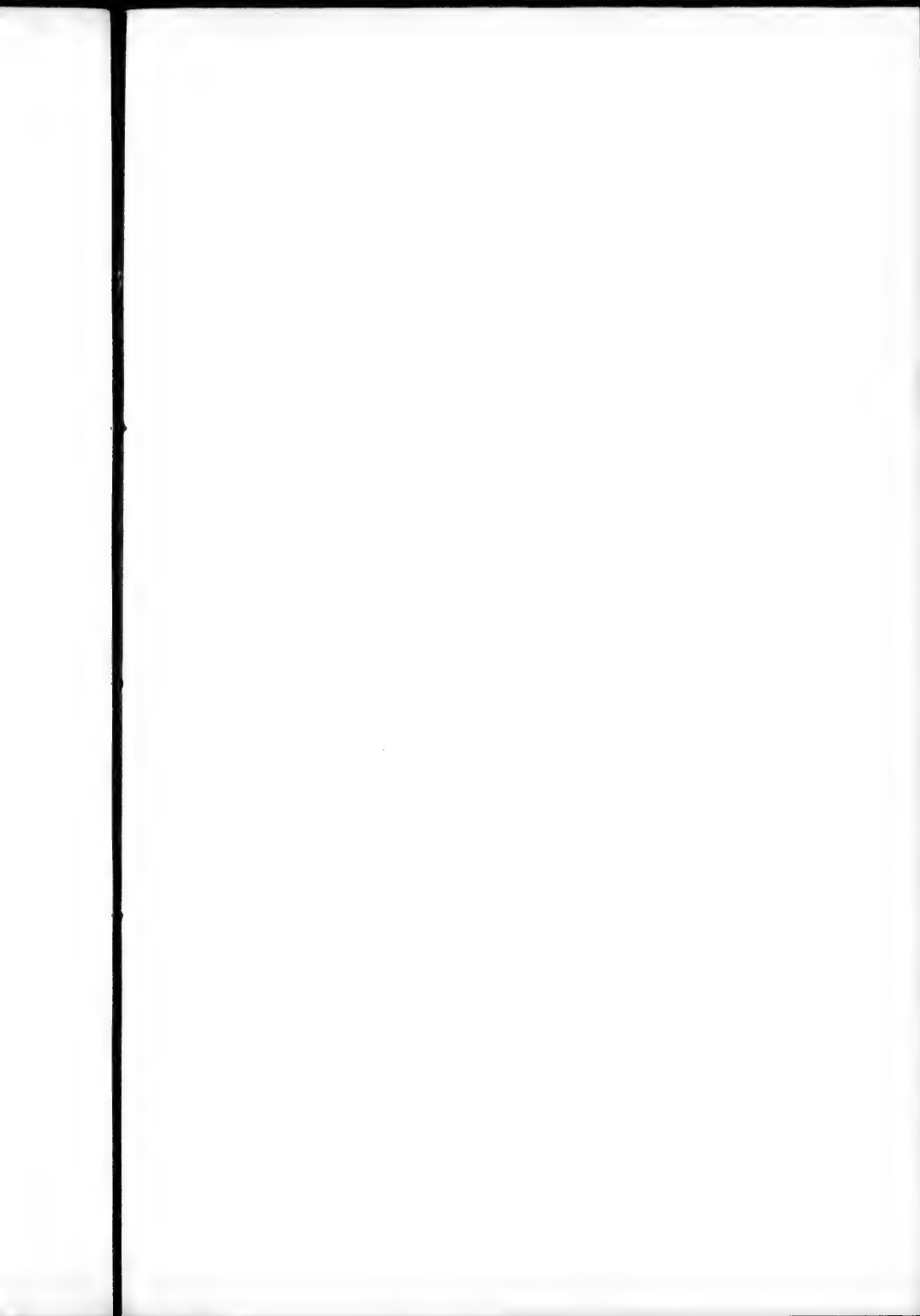
"On the 20th day of August we sailed from Ounalashka, in order to run down the continent, till we should pass the Shumagin Islands, as Captain Cook describes Kodiak one of the southern. Indeed, we wished to be clear of the Russian Settlements, as we knew nothing was to be got in the vicinity of them, before we went on the coast."

The letter from the Russian-American Company of the 15th March, 1821, written by the Board

United States
Case, p. 44.

sels would always
the Company for





of the Company to the Chief Manager, deals with domestic concerns, but contains no authority for the statement that any interference took place with other than Russian subjects.

Indeed, on reference to the full text of the letter in the Appendix, it will be seen that the communication was founded upon a report of one of the inspectors of the Company, who was referring to the improvident killing of these animals on the Islands of St. Paul and St. George; and the instructions for the suspension of killing are for the special guidance of the officers of the Company. No document from the files of the Company, or from the Russian archives, now in the possession of the United States, has as yet been presented to show that, under these instructions, anything occurred in the case of foreign vessels.

United States' Case, vol. i, p. 68.

There exists, however, a further serious discrepancy between the translations of the Russian documents between the United States and Great Britain.

The paragraph relied on by the United States in this letter of the 15th March, 1821, is as follows:—

"If, however, the islands to the northward are discovered, and are found to be available for sealing, we may, in conformity with M. Yanovsky's opinion, instruct the officials of St. Paul and St. George to work them every fifth year, limiting the annual catch in the interval on St. Paul Island to 40,000 and on St. George to 10,000. We must suppose that a total suspension of killing every fifth year will effectually stop the diminution of the fur-seals, and that it will be safe at the expiration of the close season to resume killing at the rate mentioned above. By strict observance of such rules, and a prohibition of all killing of fur-seals at sea or in the passes of the Aleutian Islands, we may hope to make this industry a permanent and reliable source of income to the Company, without disturbing the price of these valuable skins in the market."

There is no language of this character to be found in the original.

The corresponding paragraph in the British translation is as follows:—

"If this arrangement is adopted the men will never be idle, for when the time comes for one batch to be spared on one island they can all go to the other, where all three batches are to be killed. If the small islands supposed to exist to the north are discovered, and are found to be visited by seals, you should, as suggested by M. Yanovsky, give instructions to the employes of the Company on St. Paul and St. George to go and kill seals there every

sixth year, and to continue to kill 40,000 on St. Paul and 10,000 on St. George every year. At the end of every five years the killing should cease on St. Paul and St. George for one year, for the propagation of the species. During that year the catch on the small islands to the north will indemnify the Company for what it loses on St. Paul and St. George; and the following year the usual operations will be resumed, and 40,000 seals killed on St. Paul and 10,000 on St. George. These measures will preserve the fur-seal industry and advance the best interests of the Company by preventing the price of the furs from falling in the market."

United States'
Case, p. 45.

The reference to the cancellation of contracts made with foreigners, even as stated, in no respect supports the assertion that control was exercised by Russia over Behring Sea prior to 1821. These licences had been granted for hunting whales on the coast "of Eastern Siberia," and included, admittedly, territorial waters on that shore.

Nevertheless, it affords additional proof that foreigners were not "prevented from entering Behring Sea," since it testifies to the existence of Englishmen in 1819 on the very shores of the sea in question.

Ibid.

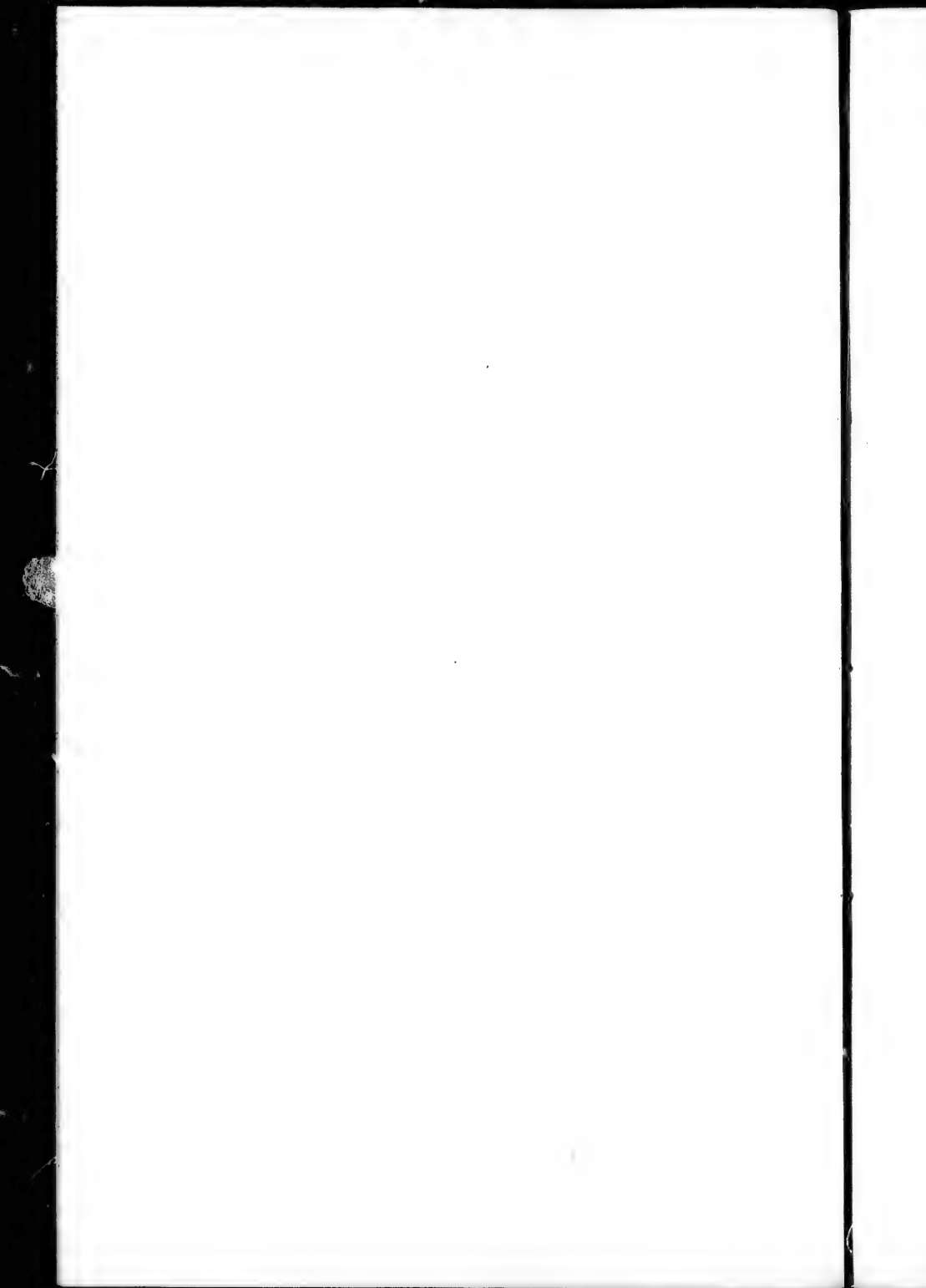
The letter of the 10th April, 1820, from the Russian Minister of Finance, shows, moreover, that the prohibition against foreigners applied to the ports of Eastern Siberia, and not to the whole sea. The Englishmen at Okhotsk and in Kamtschatka were to be informed that the Government "does not permit them to *reside* in those places."

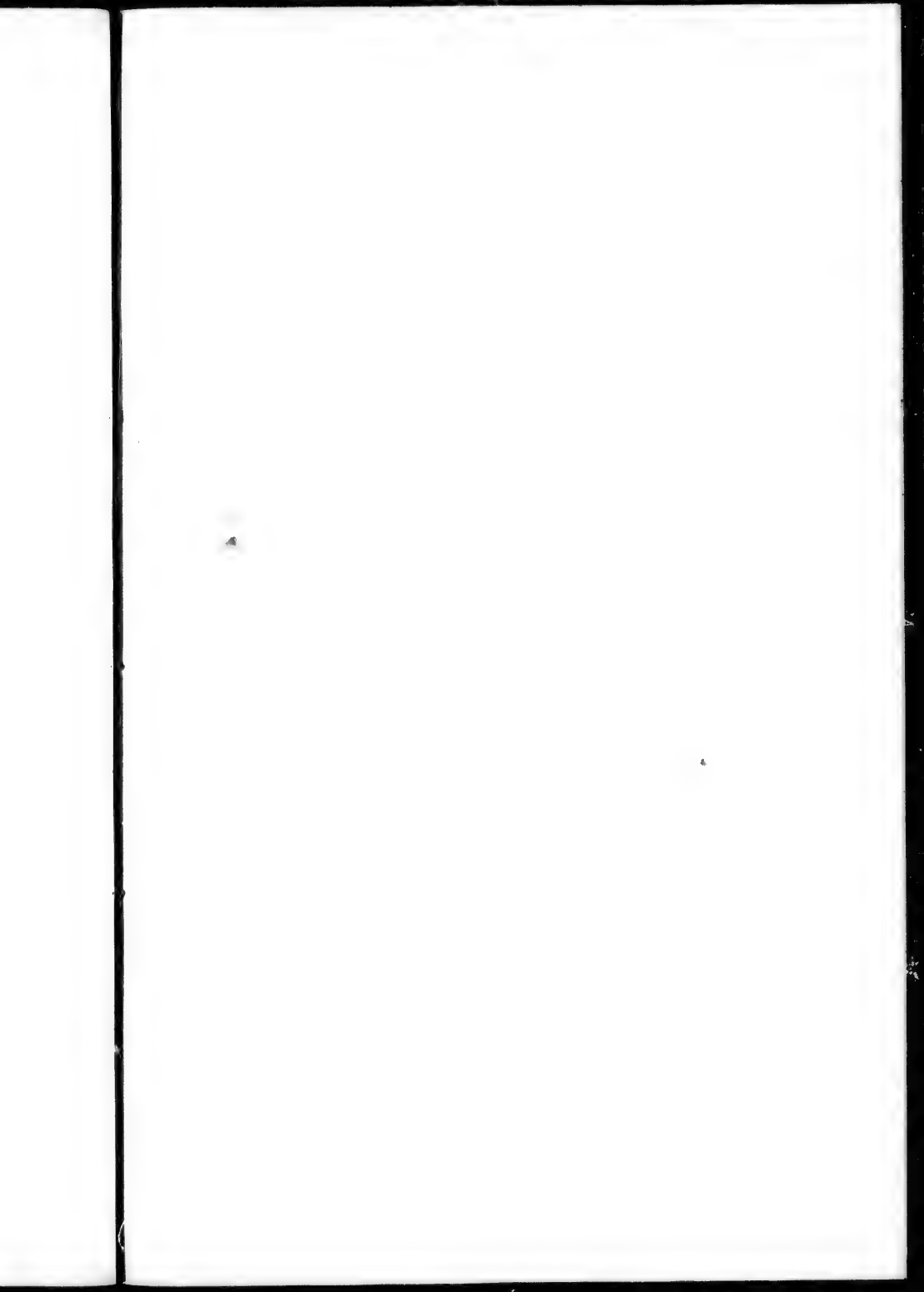
Ibid., Appendix,
vol. i, p. 51.

The letter from the Minister of Finance expressly recognizes the right of foreign merchant-vessels to navigate these waters, since, by paragraph 2 of the Proclamation of the Emperor, they were to be permitted to enter in the ports of Siberia in cases of disaster, but their cargoes in these cases were not to be discharged.

Taking the communication, however, in the sense in which it is used for the United States' Case, it discloses at the best that a year before the Ukase of 1821 the Russian Government contemplated favourably the policy subsequently covered by the Ukase. To this it can be said that neither the instructions of 1820 nor the prohibition contained in the Ukase were ever acted upon in the sense suggested by the text of the United States' Case.

The British translation of this letter differs
[843] H





seriously from that appearing in the Appendix to the United States' Case.

A comparison is here made :—

(Extracts as given in United States' Case.)

"2. The Commander of the Government of Irkutsk is hereby instructed to forbid all foreigners, except such as have become Russian subjects, to enter the Mercantile Guilds, or to settle in business in Kamchatka or Okhotsk; also to entirely prohibit foreign merchant-vessels from trading in these localities and from anchoring in any port of Eastern Siberia, except in case of disaster. (In such cases, great care should be taken that no part of their cargo be discharged or sold to anybody, under pain of confiscation of the ship.) It is hereby ordered that the local authorities shall inform the Englishman Davis at Okhotsk and Dobello's agent in Kamchatka that the Government does not permit them to reside in those places, much less to erect buildings or other immovable property.

"... 2. Having, for the benefit of the American Company, excluded all foreigners from Kamchatka and Okhotsk, and prohibited them from engaging in trade and from hunting and fishing in all the waters of Eastern Siberia, the Government fully expects that the Company, on its part, will hold itself responsible for supplying these regions with all necessaries."

The letter of the 23rd April, 1820, from the Company, as in the United States' Case, shows simply the position which, it is admitted, the Company desired to maintain, and which, doubtless, promoted the issue of the Ukase.

In the following year, however, the contentions set up in this communication fell, as the former claim based upon them had fallen.

A comparison of translation is again given :—

(As in United States' Case.)

"As soon as the Imperial Government ascertained that the contracts made were in open violation of the privileges granted the Company, it prohibited at once all foreigners not only from settling in Kamchatka or Okhotsk, but also from all intercourse with those regions, enjoining the authorities to maintain the strictest surveillance over their movements. Basing your own action upon this proceeding on the part of our highest protector, you as Commander of all our Colonies must prohibit with equal strictness all foreigners from engaging in any intercourse or trade with native inhabitants, as well as from visiting the waters frequented by sea-otters and fur-seals, over which our operations extend, under the penalty of the most severe measures, including the confiscation of ships and the imprisonment of crews engaged in this illegal traffic. You must act with the greatest severity in cases where foreigners have sold to the natives arms, powder, and lead. They must be made to understand that their presence in

(British translation.)

"2. The authorities of Irkutsk are to be instructed not to allow any foreigner, unless he has become a Russian subject, to enter a Merchant Guild, or to settle at Kamchatka or Okhotsk, and they are not to permit any foreign merchant-vessel to trade at those places under any circumstances, or to enter the ports of Eastern Siberia except in case of distress, in which case such vessel is not to be allowed to unload any part of her cargo, or endeavour to dispose of it, under pain of confiscation of the ship and cargo. Furthermore, the Englishman Davis at Okhotsk and Dobello's agent in Kamchatka are to be informed, through your officials, that the Government refuses them permission to remain at those places, or to build houses or hold real property there; the local authorities shall afford them all proper facilities for disposing of their property and leaving the country.

"... 2. Having, for the benefit of the American Company, excluded all foreigners from Kamchatka and Okhotsk, and forbidden them even to come to those places to trade, the Government expects that the Company, on its part, will assist in providing those places with all necessaries."

United States'
Case, p. 47; and
Appendix, vol. i,
p. 51.

(British Translation.)

"In view of the fact that the Government has perceived that these schemes would have done much harm to the Company, and has prohibited foreigners not only from settling, but also from trading, at Kamchatka and Okhotsk, where there are established authorities, and where a surveillance can be exercised, it is your duty, as the Manager of the Colony, to use your best endeavours to carry out His Imperial Majesty's orders, by strictly prohibiting the foreigners who may visit the Colony from engaging in a traffic with the Indians, and, in case any of them violate the Regulations, not to be afraid to arrest the bold adventurers and seize their ships, if they carry on a traffic injurious to the Company's interests at places, or on islands, occupied by it, and especially if they supply the Indians with arms, powder, and lead. You should not even allow them to enter your ports unless you find it necessary to buy something from them which the Company urgently requires. In a word, you should adopt towards

these advices
for the Govt
to assume."

these adventurous traders such an attitude as it is proper for the Governor of all the places occupied by the Company to assume."

our waters is contrary to our laws, and that they will never be admitted to any port unless you or your subordinates convince yourselves that such is necessary for the saving of life. In a word, you must preserve an attitude in full accord with the views of the Imperial Government on this subject, and protect against all intruders the domain of land and water granted to us by grace of the Emperor, and necessary for our continued existence and prosperity."

From the references in the United States' Case, it appears that the Russian Archives have been searched in vain for an instance of action taken under the instructions from the Board of Administration of the Company set out in the text.

The statement is made in the United States' Case that there is "no record" of hunting or trading by foreigners in Behring Sea.

The existence of traders in this sea has already been shown; but until whaling developed in the Northern waters, there was little inducement to visit this sea.

The record between 1824 and 1825 of the visits to Behring Sea by whalers and traders tells with effect against the argument of the United States based on the statement above, applied to the period anterior to the Treaties between Great Britain and Russia and between the United States and Russia.

After insisting that under the Ukase of 1799 Russia prevented foreign vessels from hunting or trading in Behring Sea, and having contended that the Ukase of 1821 was declaratory of existing rights extending the Russian claim south to latitude 51°, and that Russia's exclusive rights in Behring Sea were recognized in 1824 and 1825, the Agent of the United States, with the record of whalers and traders before him, is forced to the admission that, subsequently to this Convention, in the latter years, Russia—

"never sought to prevent vessels from passing through Behring Sea in order to reach the Arctic Ocean, nor did she always strictly enforce the prohibition of whaling within the distance of 100 miles from its shores."

The opinion of the Russian Foreign Office in 1847 was that there was no right under the Ukase of 1821—

"to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America."

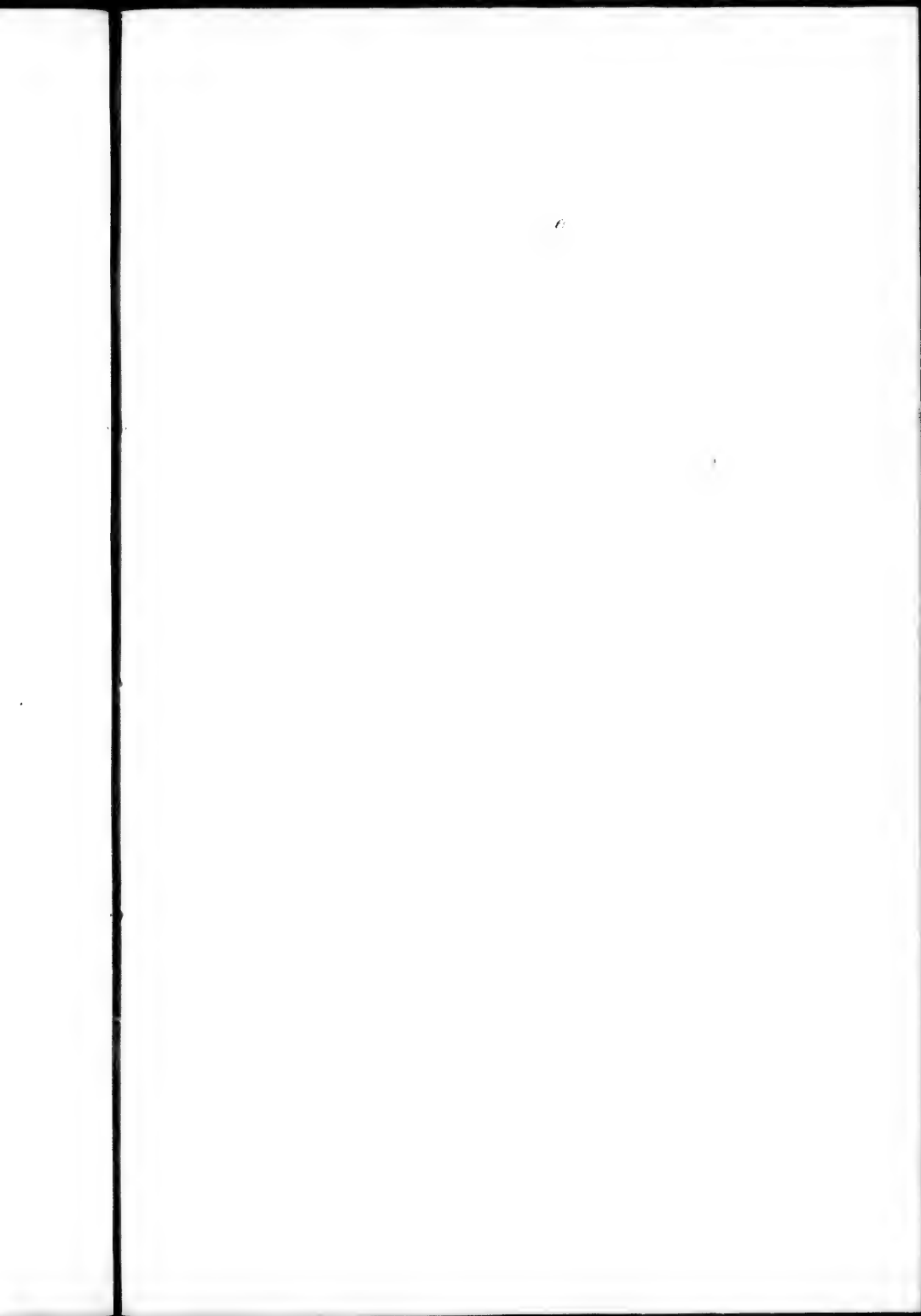
United States' Case, p. 51.

Ibid., p. 42.

Ibid., p. 50.

Ibid., p. 57.
See p. 113 et seq., British Case, as to Russia's interpretation of her maritime rights after 1824-25.
British Case, p. 85.

20



and the British Case contains a long list of vessels which resorted to these waters so soon as whaling developed in that part of the world.

Nevertheless, the United States' Case says of United States' Case, p. 42.
the Ukase of 1821:—

“The only effect which could have been intended by that Edict upon the coasts and waters of Behring Sea and the Aleutian Islands was to strengthen and confirm the jurisdiction theretofore exercised by Russia, and this is made clearly to appear from the official documents of that period,” &c.

(D.)

United States' Case, p. 56.

d (1). Neither in the protests, negotiations, nor Treaties is any reference found to Behring Sea.

Ibid, p. 57.

d (2). In the resulting Treaties no reference is made to this (Russian) jurisdiction so far as it related to Behring Sea, although it is expressly and conspicuously renounced as to the Pacific Ocean.

Ibid, p. 51 *et seq.*

In the review of the Treaties of 1824-25, the United States insist that the discussions preceding them, and the Treaties also, referred only to "the maritime dispute" and to "the territorial dispute relating to the north-west coast."

Presumably, this north-west coast is any one of the various definitions hereinbefore mentioned, outside of Behring Sea.

With a question of the right on the part of the United States to control that part of the North Pacific now known as Behring Sea, the above premises would not, it is submitted, be fatal to the British contention; as, however, these questions have been raised, and are before the Tribunal in connection with the general subject of exclusive jurisdiction in this sea, they will be further examined.

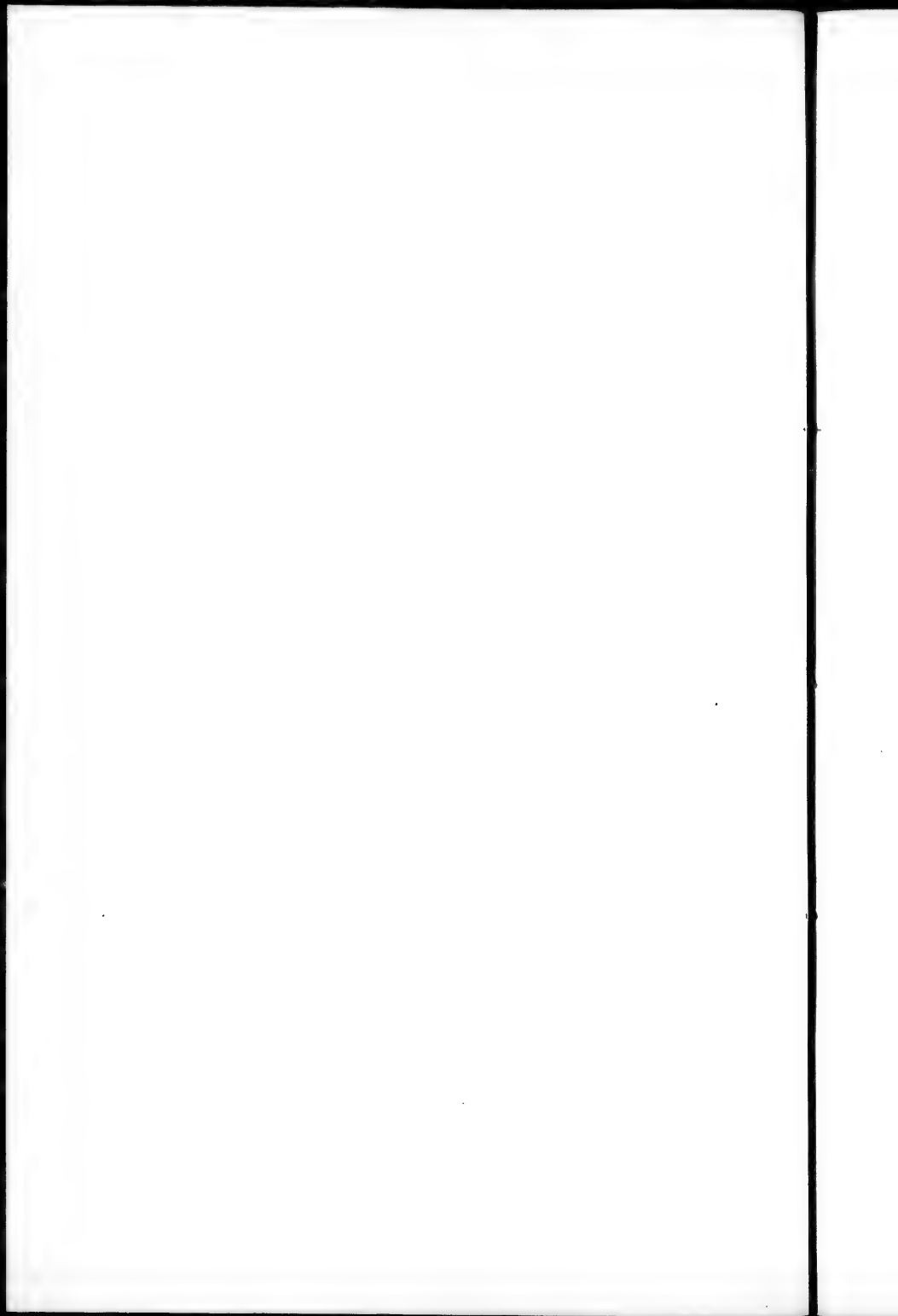
The United States have not referred at any length to the important United States' documents touching these Treaties.

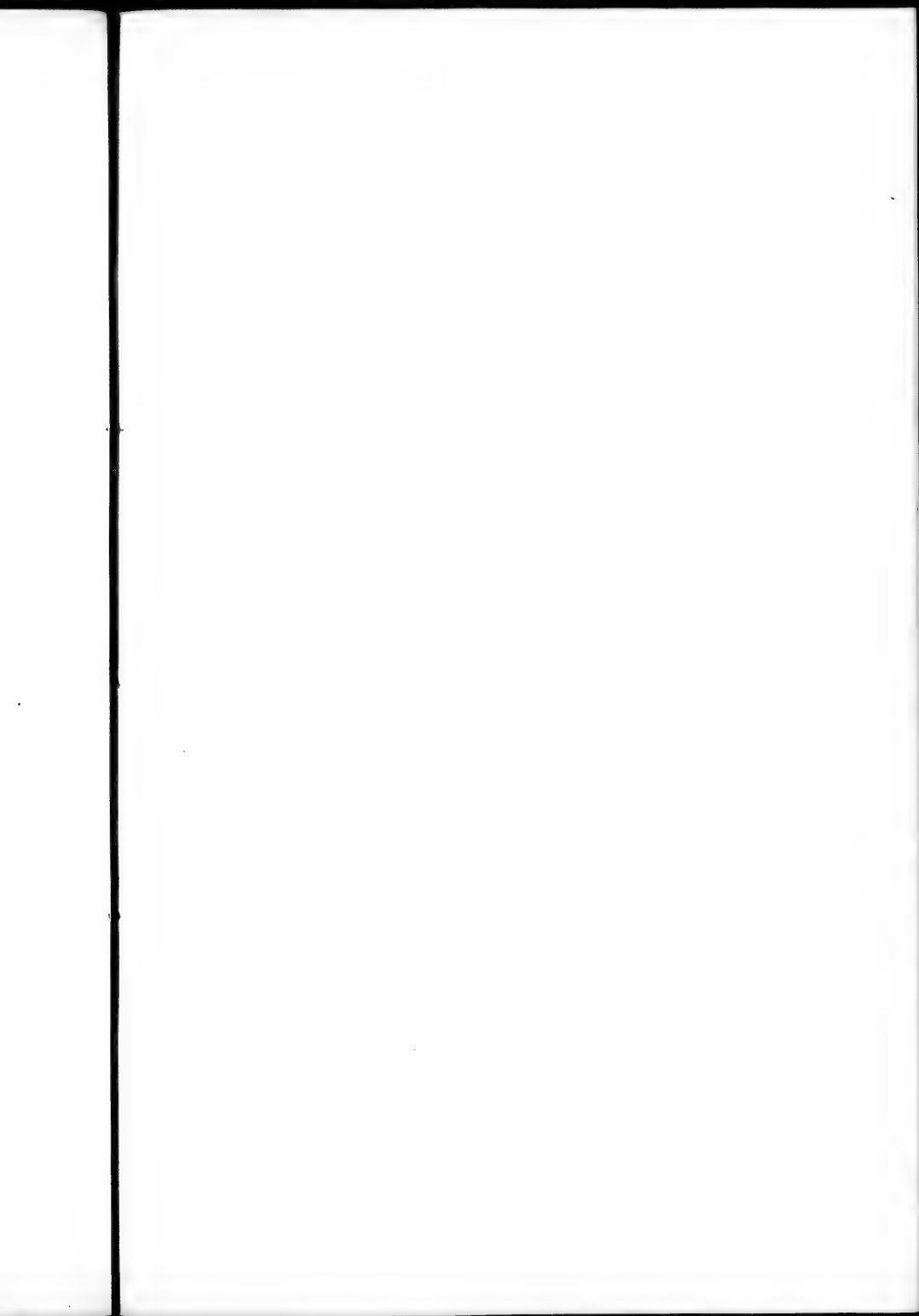
British Case, p. 50.

They are mentioned in the British Case, and they distinctly show that the United States denied rights, when claimed by Russia, to *any part* of the continent of America. It may be admitted that Mr. Adams was chiefly concerned in the preservation of the rights enjoyed at the time by United States' citizens on the coast south of the Aleutian archipelago, and was ready to agree upon a conventional boundary which would give Russia control of and rights upon the northern part of the continent.

The archives of the United States, however, afford ample proof that upon good grounds Mr. Adams combated with force what he termed Russian "pretensions" of authority upon any part of the American continent.

The Ukase, while clearly covering and including Behring Sea, did not refer to it in terms.





The protests against the Ukase, however, excepted no portions of it.

The British protests have been shown to have covered as much as the objectionable Ukase. It is contended by the United States that the omission of a reference to Behring Sea in the Treaties between the United States and Russia, and Great Britain and Russia, proves that Behring Sea was intentionally excluded from the operations of these Conventions. British Case, p. 41.

Were this case even as put, it still remains for the United States to show the law and practice of nations vested exclusive authority over that sea in Russia, when she claimed to own the eastern and western shores, and now in the United States, when she owns only the shore upon one side only.

There is abundant evidence to show that Behring Sea was covered by the Treaty.

But M. Poletica, in opening the discussion with the United States, the 28th February, 1822, United States' Appendix I, p. 133, distinctly referred to Behring Sea as part of the Pacific Ocean. Russia's possessions in the *Pacific Ocean* extend, he says, from Behring Strait to latitude 51°.

The negotiations continued for two years, and ended in an Agreement that Great Britain should be free to navigate and fish "in any part of the Pacific Ocean." Where is the proof that Russia in 1825 attached a different and much more restricted meaning to those words than in 1825?

There is no intimation or hint to that effect in all the negotiations with England or with the United States. It was for Russia to draw the distinction, and reserve her jurisdiction over Behring Sea if she intended or wished to do so, but the correspondence leaves no room for doubt either that the whole maritime jurisdiction claimed was objected to and abandoned, or as to what Great Britain's answer would have been to an attempt to retain any part of it.

The assertion made is that the objections to that Edict of 1821 were inspired by the claim of jurisdiction over large portions of the Pacific Ocean, as distinguished from Behring Sea, and by the conflicting claims to the coast south of 55 degrees of north latitude, over which Russia then, for the first time, sought to extend exclusive authority. It is said that this is shown by Ukase of 1821.

the correspondence which grew out of the protests, and that the history of the period and the locality, the discussion which followed the Ukase, and the Treaties resulting, attest that the object both of the United States and Great Britain was to maintain their claims to that part of the coast and to the full navigation of the ocean which washed it.

It is well to remember what was the state of affairs as regards fishing and the hunting of seals in the territory covered by it at the time of its passing.

The transactions of the Russian-American Company had been kept strictly secret. Their right to the Pribyloff Islands was unquestionable, and the superior advantages or riches of that sea as regards the fisheries or fur-seals were unknown to foreigners.

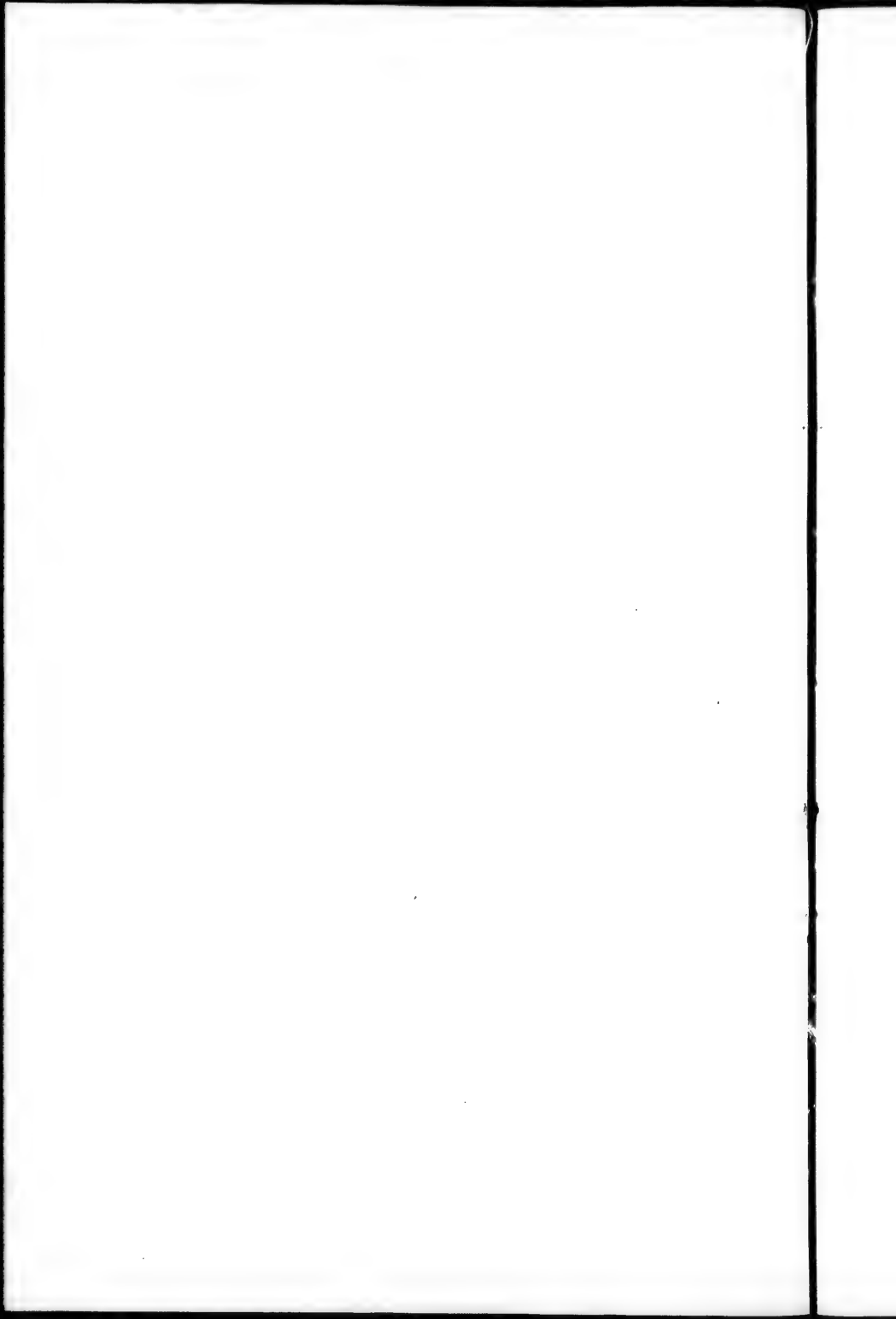
Mr. Blaine, in his despatch dated the 17th December, 1890, says :—

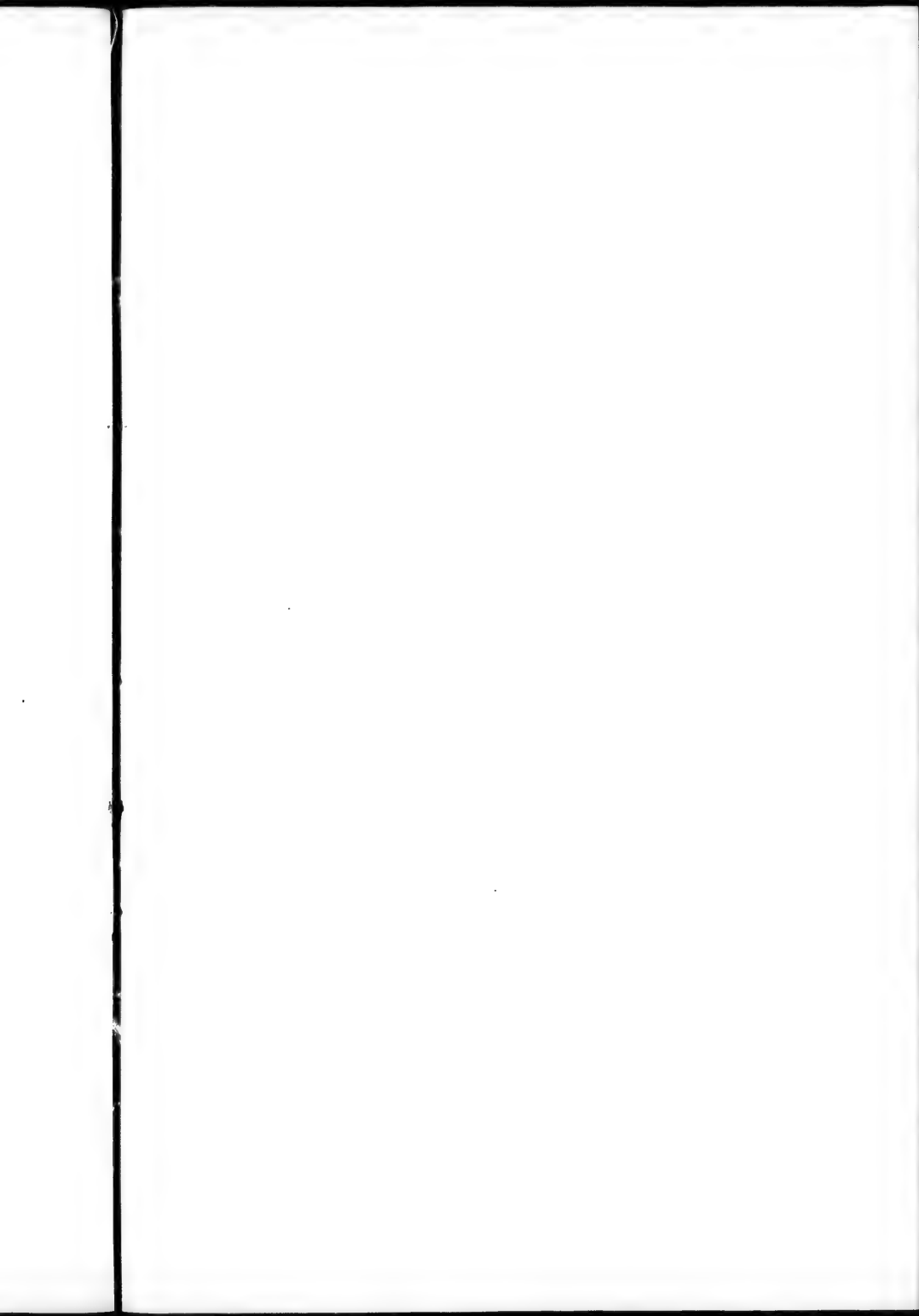
"As a matter of history, there was no trade and no navigation (except the navigation of explorers) by the United States and Great Britain in the Behring Sea in 1784, or even at the time these Treaties were negotiated."

There can be no doubt, however, and none is suggested, as to what rights the Ukase actually claims.

It assumes to grant the pursuits of commerce, whaling, and fishing exclusively to Russian subjects from Behring Sea to latitude 51°, and to prohibit foreign vessels from approaching the coast there claimed within less than 100 miles, and whatever Russia may have intended by the subsequent Treaties, which will be spoken of hereafter, it seems clear that no part of this claim was admitted, but that the whole of the jurisdiction, which is plainly asserted, was as plainly protested against and denied.

On the part of the United States Mr. Adams, on the 22nd July, 1823, in writing to Mr. Middleton, their Ambassador at St. Petersburg, defined accurately the claim made as extending from the 45th degree of north latitude on the Asiatic side to the latitude of 51° north on the American coast, and as assuming the right of interdicting the navigation and fishery of all other nations to the extent of 100 miles from the whole of that coast; and in reference to this





assumption of jurisdiction he declared, "The United States can admit no part of these claims."

Much comment and argument has been made upon this statement; but, having regard to the material upon which it was made, and to Mr. Adams' other letters, it would seem to have expressed his exact meaning, and to define accurately the position assumed both by the United States and Great Britain.

It can by no construction be made consistent with an intention to admit any definite part of the claim. The Russians, in effect, said:—

"We own the American coast to latitude 51°, and prohibit you from coming within 100 miles of it."

To which Mr. Adams replied:—

"We do not admit either your claim of ownership or your right to exclude us."

In the Confidential Memorandum prepared by Mr. Middleton for the inspection of the Russian Emperor (see Am. For. Relations, vol. v, p. 440), and forwarded to Mr. Adams on the 1st December, 1823, he states as the principle agreed to by all jurists, that real occupation only can give the rights to the property and to the sovereignty of an unoccupied country newly discovered:—

British Case,
Appendix, vol. ii,
p. 7.

"It is necessary, therefore," he proceeds to say, "to examine the two points of fact:—

See vol. v,
Am. For. Rel.

"1st. If the country to the south and east of Behring Straits as far as the 51st degree of north latitude is found strictly unoccupied.

"2nd. If there has been latterly a real occupation of this vast territory."

He then states that the only establishment on this side of the 60th degree was that on the Island of Sitka (more than 6 degrees from the southern limit fixed by the Ukase), and adds:—

"The conclusion which must necessarily result from these facts *does not appear to establish* that the territory in question had been legitimately incorporated with the Russian Empire."

It is thus apparent that the title to the territory claimed, or to any definite part of it, was regarded by the United States as by no means indisputable, and the language of Mr. Adams very fairly expresses this view. While not in terms denying that Russia may have a right to some part of the territory, he declines to admit

Claim of maritime
jurisdiction.

it, leaving Russia to furnish the proof, though willing, as he afterwards says, to settle the territorial claim only at 55 degrees north latitude.

But whatever may be argued as to Mr. Adams' language with regard to the *territorial title*, it is impossible to find any admission throughout the correspondence, either expressed or implied, on the part of Great Britain or the United States, of the maritime jurisdiction claimed, or to question that it was emphatically denied without reference to the extent or validity of the title to the coast.

Russia did not pretend to rest her claim to the 100 miles limit upon any other ground than her right to treat Behring Sea as a *mare clausum*, as appears from M. Poletica's letter already referred to of the 28th February, 1822, a claim which was then regarded by Mr. Adams as hardly worthy of answer, and is now definitely disclaimed. It was not then suggested that, as regards Behring Sea, any reason could be assigned, apart from this doctrine, on which the limit of 100 miles could be upheld, and as to the precedents referred to in the United States' Case, p. 40, it is sufficient to say that they are founded upon Treaties which alone could support them. They were met with good-natured ridicule by Mr. Middleton in his interview with the Governor of Siberia, reported in his letter to Mr. Adams of the 8th August, 1822, which, in his view, was a treatment both appropriate and effective.

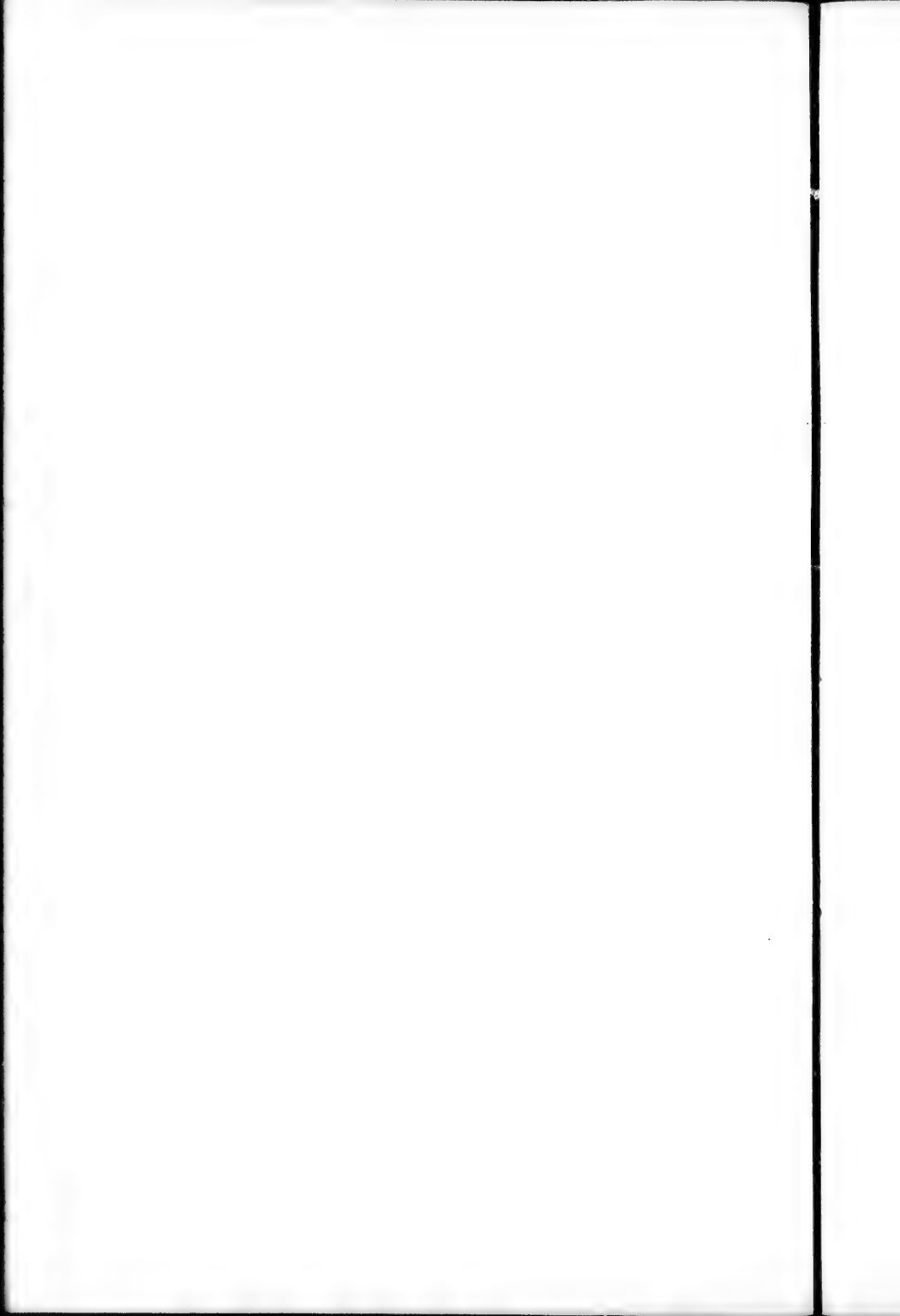
The extension of trade along the coast farther north was not contemplated, and the limit of territorial ownership north of Alaska was regarded as of comparatively little importance. As to it alone, guarded carefully from including any other of the rights claimed, Mr. Adams was willing to agree to a boundary-line of 55°. (Adams, 22nd July, 1823, p. 4.)

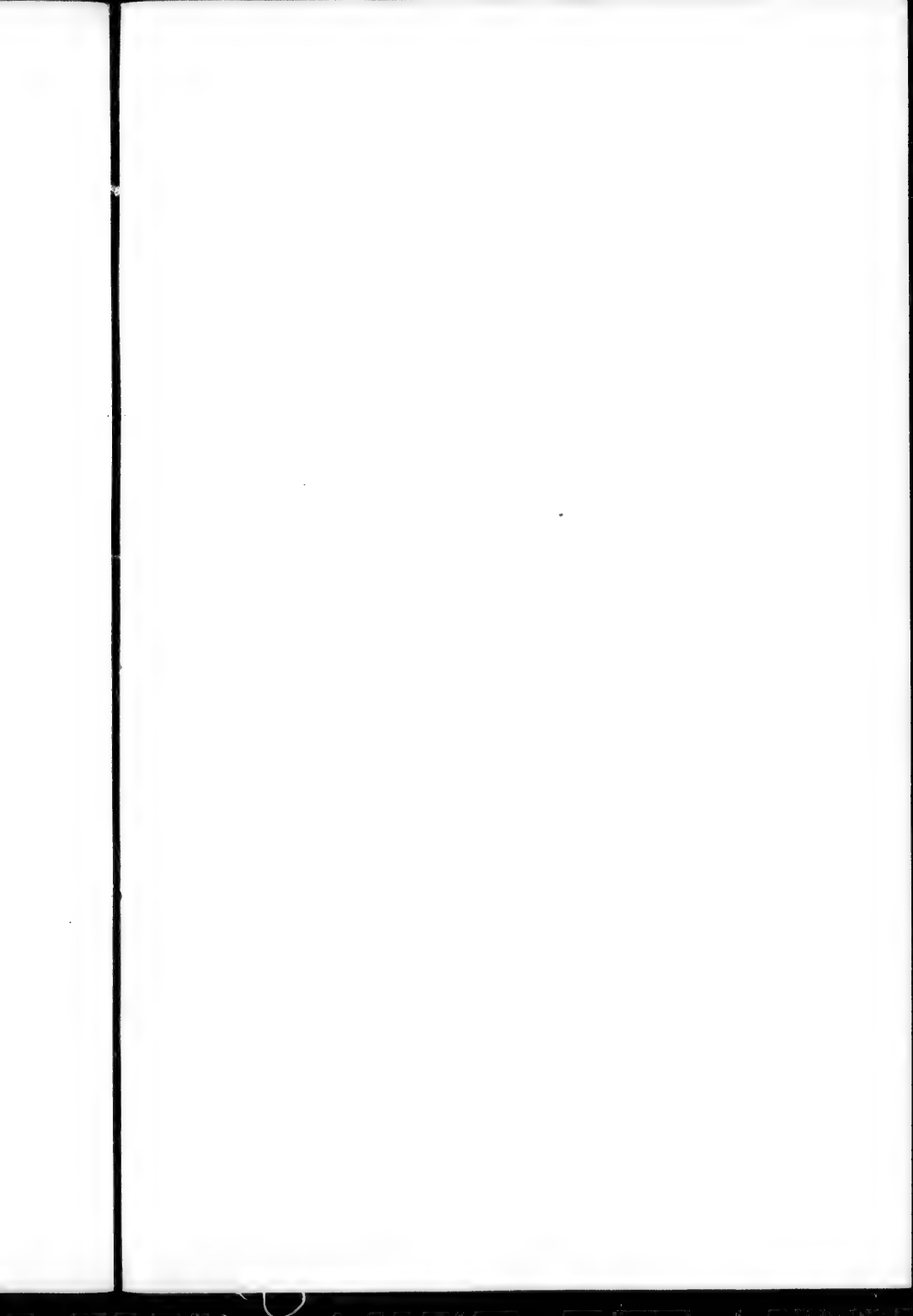
Mr. Stratford Canning, in a letter of the 3rd February, 1822, reporting a conversation to Mr. Adams, who gave him to understand that it was not the intention of the American Government to admit the claim of Russia, adds:—

"His objection appears to be more particularly to the exclusion of foreign vessels to so great a distance from shore."

The King's advocate, to whom the Edict was referred for report, treats the object of the Ukase as being—

"to obtain from His Britannic Majesty's Government an acknowledgment of territorial rights which are assumed by





Russia over a portion of sea that may become of great importance with reference to the trade of that part of the world and the discoveries which are now directed to that quarter."

This can hardly refer to the Pacific Ocean, or to the territory south of latitude 60°, where no further discoveries remained to be made. The opinion of Lord Stowell of the 26th December, 1821, points out that the mere discovery of a coast cannot give a right to the exclusive possession of a whole extensive continent to which it belongs, and less to the seas that adjoin to a very considerable extent of distance.

With these opinions in his possession, Lord Londonderry wrote on the 18th January, 1822, that His Britannic Majesty was not prepared to admit that the ships of friendly Powers, even supposing an unqualified sovereignty was found to appertain to the Imperial Crown in those vast and very imperfectly occupied territories, could, by the acknowledged laws of nations, be excluded from navigating within the distance of 100 Italian miles, as therein laid down, from the coast; the exclusive dominion of which is assumed (but, as His Majesty's Government concedes, in error) to belong to his Imperial Majesty the Emperor of All the Russias.

In a letter from the Hudson Bay Company to Mr. G. Canning, of the 25th September, 1822, it is said this Company has trading establishments on the Mackenzie River, which falls into the Frozen Ocean as far north as 66° 30', which carry on a trade with those Indians who inhabit the country to the west of that river and to the north of 60° of north latitude, and a Memorandum is inclosed purporting to show on what slight grounds the Russian claim rested.

The Duke of Wellington was appointed to represent England at the Verona Conference, and these opinions, with the letter and Memorandum mentioned, were sent to him by Mr. George Canning on the 27th September, 1822, with a letter, in which it is said:—

"Enlightened statesmen and jurists have long held as insignificant all titles of territory that are not grounded on actual occupation. . . .

"I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the Russian Empire as a *mare clausum*, and to extend the

British Case,
Appendix, vol. ii,
p. 12.

See this letter,
20th November,
1821 British Case.
Appendix, vol. ii
p. 2.

British Case,
Appendix, vol. ii,
p. 18.

exclusive territorial jurisdiction of Russia to 100 Italian miles from that coast, will be publicly recalled."

The Duke of Wellington, thus instructed, gave to Count Nesselrode a Memorandum on the 17th October, 1822, to which Count Nesselrode answered, on the 27th November, in substance, justifying the Russian claims.

British Case,
Appendix, vol. ii.
p. 25.

In reply to this the Duke, on the 28th November, declined to found on that paper the negotiations for a settlement, adding that they objected to the Ukase on the grounds that His Imperial Majesty assumes thereby an exclusive sovereignty in North America, of which we are not prepared to acknowledge the existence or the extent, and that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations:—

"We contend," he says, "that the assumption of this power is contrary to the law of nations, and we cannot find a negotiation upon a paper in which it is again broadly asserted."

Both these Memoranda having been, by arrangement, considered as *non-avenus*, the negotiations were renewed.

In the course of them, the question of territorial boundary being found difficult to arrange, Count Nesselrode stated that if it was not completed he saw no necessity for an agreement respecting a maritime question. This suggestion Sir C. Bagot met, as is stated in his letter to Mr. George Canning of the 17th March, 1824—

Ibid., p. 54.

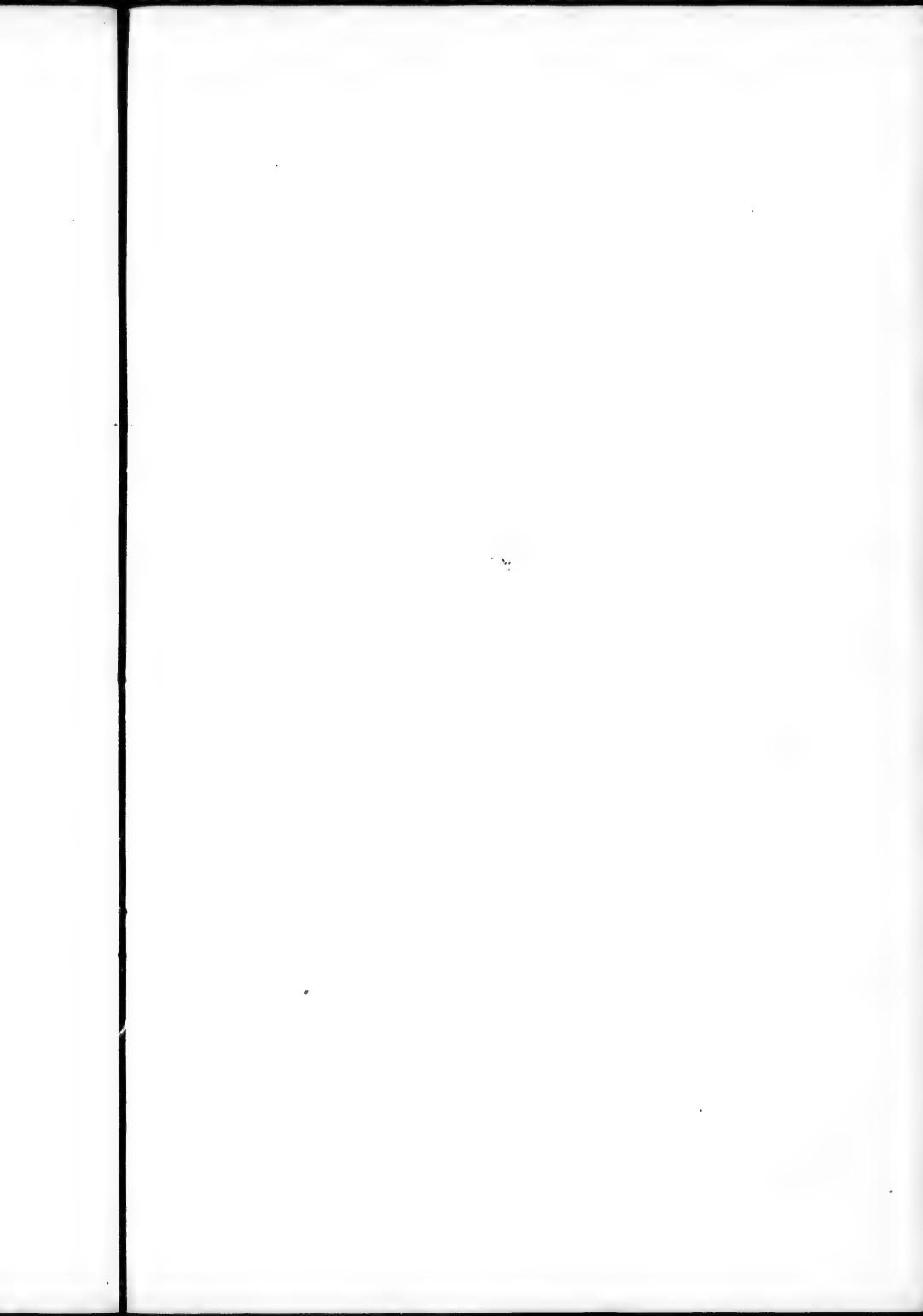
"by explaining very distinctly, both to him and to M. Poletica, that the maritime pretension of Russia was one which, violating as it did the first and most established principles of all public maritime law, admitted neither of explanation nor modification, and that every Government considered themselves possessed of a clear engagement on the part of Russia to retract in some way or other a pretension which could neither be justified nor enforced."

Ibid., p. 60.

Mr. George Canning, on the 20th May, 1824, writing to Count Lieven, says that he shall be able shortly to give to His Majesty's Ambassador at St. Petersburg such instructions as shall meet, in a great degree, the wishes of the Russian Court, and adds:—

Ibid., p. 61.

"We take for granted that the exclusive claims of navigation and jurisdiction over the North Pacific Ocean, which



were first formulated in the Ukase of September 1821, are to be altogether withdrawn."

It is to be remarked that in the first draft ^{British Case, Appendix, vol. ii, p. 68.} Convention inclosed by Mr. G. Canning to Sir C. Bagot on the 12th July, 1824, Article I purported to give to the subjects of each Power—

"the right of free navigation along the whole extent of the Pacific Ocean, comprehending the sea within Behring Straits."

It was suggested by Count Lieven that this condition, an entirely new one, might cause the Imperial Government hesitating in admitting it—

"without modifying the actual statement so as not to ^{Ibid., p. 66.} expose the coasts of her Asiatic possessions on the Arctic Ocean to difficulties that might arise owing to visits by foreign vessels."

The objection, therefore, related wholly to the straits and the Russian Asiatic possessions beyond them, and not to Behring Sea.

In answer, Mr. Canning on the 24th February, 1824, remarked that a—

"Power which could think of making the Pacific a *mare clausum* might be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner." ^{Ibid., p. 65.}

The Russian Plenipotentiaries, however, disclaimed any intention of maintaining any exclusive claim to the navigation of the straits or the seas to the north of them, and this was accepted as satisfactory.

Mr. George Canning on the 8th December, 1824, there having been much difficulty in concluding the arrangement, writes to Mr. Stratford Canning, the British Plenipotentiary for that purpose:—

"It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretension of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of further effectual remonstrance against it. ^{Ibid., pp. 73-75.}

"You will therefore take care, in the first instance, to repress any attempt to give this change to the character of the negotiations, and will declare without reserve that the

point to which alone the solicitude of the British Government and the jealousy of the British nation attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the Ukase of 1821. . . . The right of the subjects of His Britannic Majesty to navigate freely in the Pacific cannot be held as a matter of indulgence from any Power. Having once been publicly questioned, it must be publicly acknowledged. . . . It remains only in recapitulation to remind you of the origin and principles of the whole negotiation. It is not on our part essentially a negotiation about limits. It is the demand of the repeal of an offensive and unjustifiable assumption of exclusive jurisdiction over an ocean of unmeasured extent, but a demand qualified and mitigated in its manner, in order that its justice may be acknowledged and satisfied without soreness and humiliation on the part of Russia. . . . If the territorial arrangements are not satisfactory we are ready to postpone them, and to conclude and sign the essential part—that which relates to navigation alone—adding an Article stipulating to negotiate about territorial limits hereafter."

It would seem very plain, therefore, that the claim to maritime jurisdiction was the one to which both England and the United States attached importance; that against it the protests which were emphatic and unqualified were mainly directed; and that they demanded and obtained not a partial, but a total and unconditional adjustment of it.

While Behring Sea is not named in terms in the Treaties, &c., the argument on this point is against the position of the United States, since the Treaty of 1825 (Russia and Great Britain) expressly deals with the waters of the Pacific Ocean from Behring Straits south.

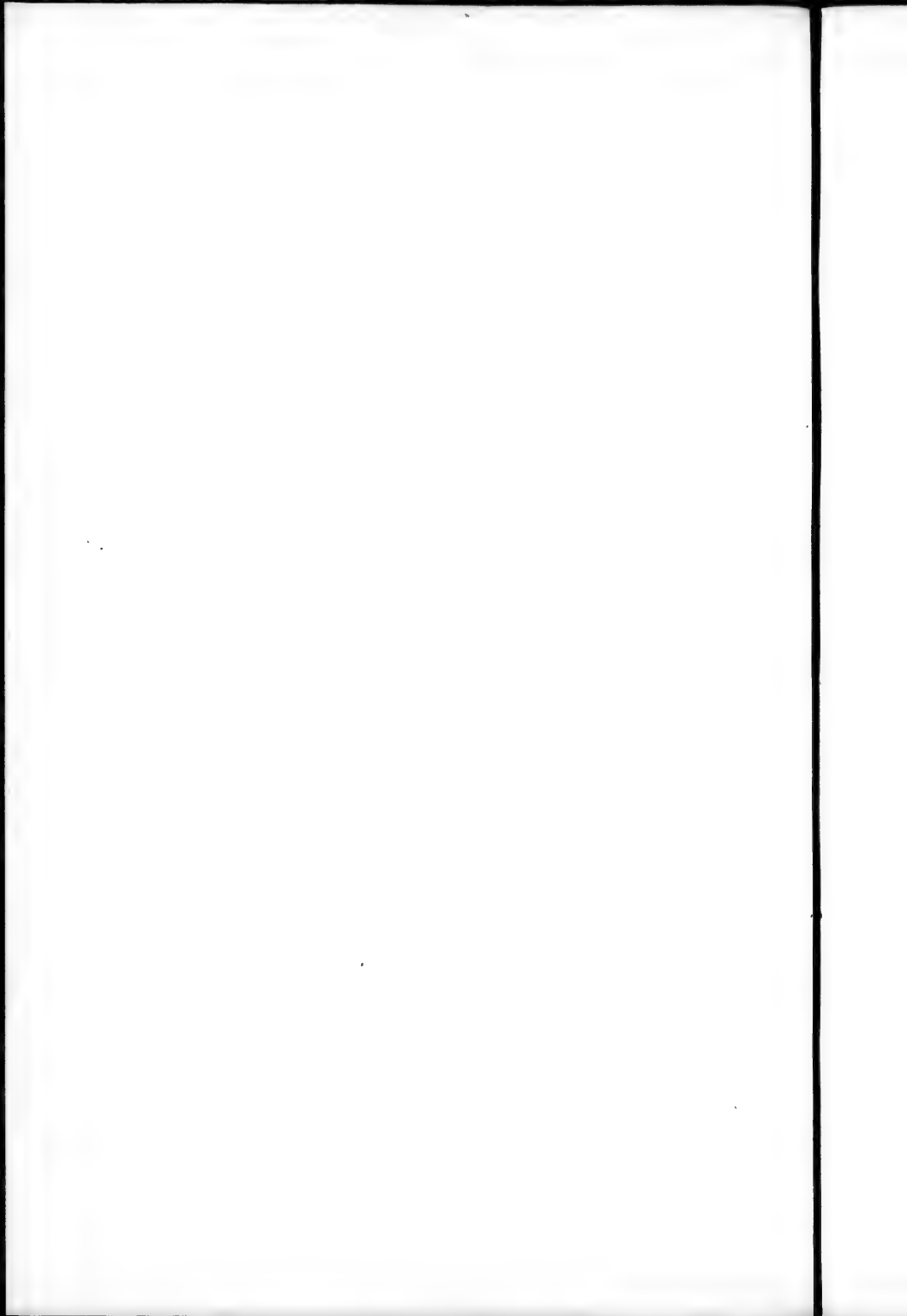
Article I covers "any part of the ocean, commonly called the Pacific Ocean."

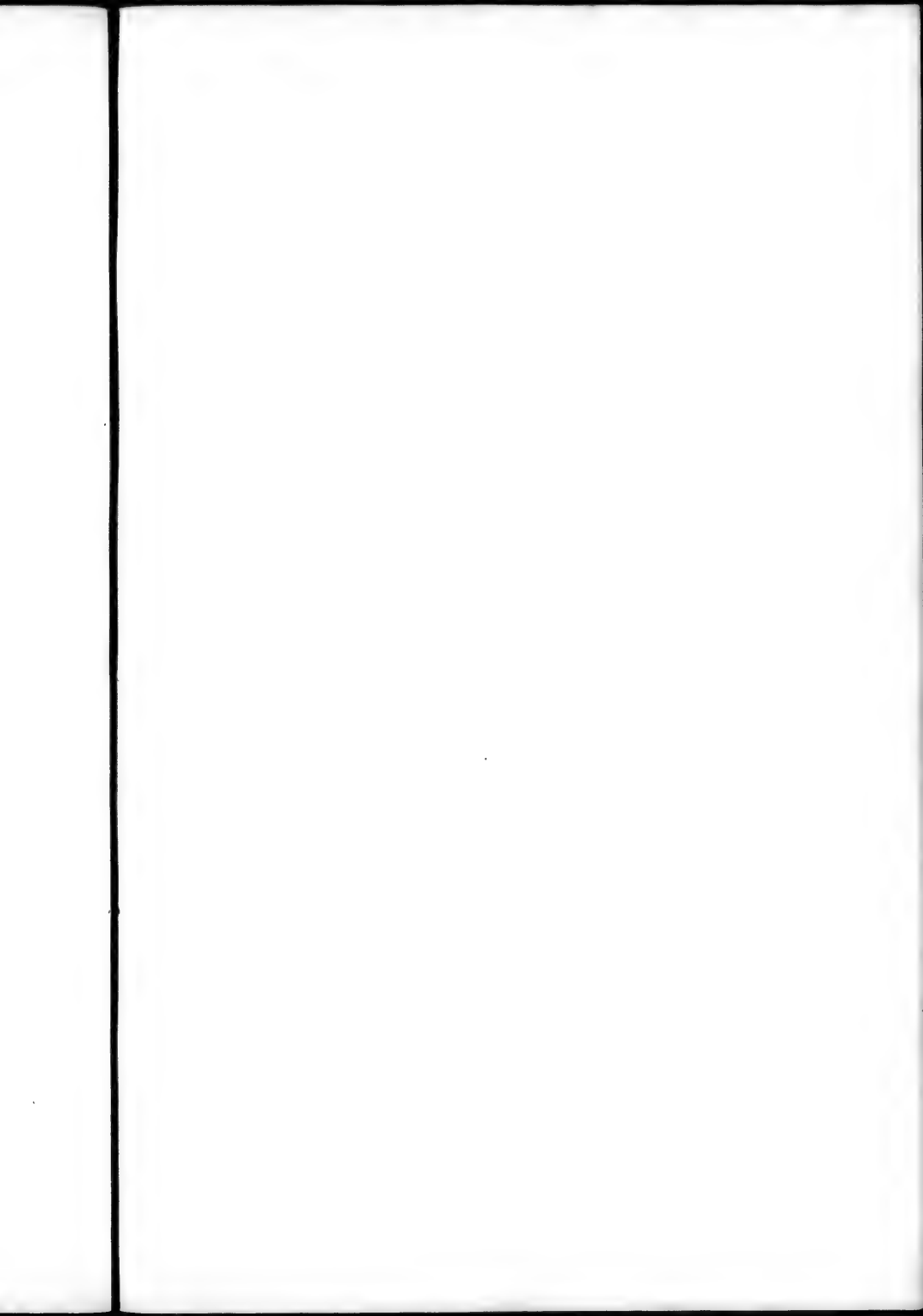
Article II is unlimited in its application to the continent of America.

Article III refers to the "coast of the continent" from the line of boundary between Russian and British possessions, which runs from about 54° 40' to the Frozen Ocean.

Article VII provides that for ten years Russian and British vessels shall be at liberty to mutually frequent all inland seas the gulfs, havens, and creeks, on the coast mentioned in Article III, for the purposes of fishing and of trading.

Therefore, the Convention of 1825 not only settled the maritime rights of the nations in Behring Sea, but secured the liberty to trade at all ports therein as well.





The privilege was extended by Treaty on the 11th January, 1843, and again on the 12th January, 1859, for ten years.

See Sumner's speech, British Case, vol. i, p. 81.

It is said that the maritime dispute was settled by the first clause of the Conventions, and that it is based upon the IIIrd Article of the Convention of 1790 between Great Britain and Spain.

United States' Case, p. 52.

There is, however, an important difference opposed to the United States in this respect.

In the Spanish Treaty the territory was bounded by the waters of the Pacific Ocean, where it included no other sea or subdivision. The Article, in that case, refers very properly to the "Pacific Ocean" only.

In the Conventions of 1824 and 1825, the parties had been discussing a claim which in terms ran from Behring Strait down into the main waters of the North Pacific. This ocean was separated from the Arctic by Behring Strait. Geographers, historians, discoverers, and explorers of the day and subsequently have referred to the water of Kamtchatka Sea, Behring Sea, and all the waters between the Straits and to the Antarctic Ocean, as waters of the North Pacific or South Sea.

The Ukase of 1821 was abandoned, and in the language of the Treaties care was taken to make the retreat of Russia as unpleasant as possible:—

Canning to Bagot, British Case, Appendix, vol. ii, p. 32.

Bagot to Canning, *ibid.*, p. 40.

"We negotiate about territory to cover the remonstrance upon principle."—(Canning to Canning, 4th December, 1824)

Canning to Bagot, *ibid.*, pp. 46-49.

Canning to Canning, *ibid.*, pp. 73-75.

The Convention, therefore, dropped the precise limitations used in the Ukase, but, with Article III of the Nootka Sound Convention before them, the negotiators took care to enlarge the meaning of "Pacific Ocean," and so used the words "commonly called the Pacific Ocean," obviously to include every portion of the high seas which the Ukase covered. The words are: "In any part of the Great Ocean, commonly called the Pacific Ocean or South Sea," in the Russian "Convention," while the corresponding words in the Spanish Article are simply: "In the Pacific Ocean or in the South Seas."

In addition to what has been said upon this subject in the British Case, it may here be added that neither the name of Behring Sea, Sea of

United States'
Case, Appendix,
vol. I, p. 14.

Ibid, p. 16.

"Account of the Russian Discoveries between Asia and America," by William Coxe. London, 1803.

Although the work quoted above is not the same edition as that cited in the Case of the United States, it is a fourth edition, considerably enlarged.

United States'
Case, p. 53.

Kamchatka, nor any other subdivision of the North Pacific appears in the Charter of 1799.

Indeed, the waters of that sea and the waters below, wherein lie the Kurile Islands, are, in the first paragraph of the Charter, called the "North-Eastern Ocean."

No name separate from the general term for the Pacific waters is found either in the Ukase of Paul or of Alexander.

No distinct or separate name for such a sea is found in the "Rules established for the Limits of Navigation."

In the confirmation of the Charter of 1821 the words "North-Eastern Sea" are again applied to the waters of the Pacific as well as to the waters of what is now known as Behring Sea.

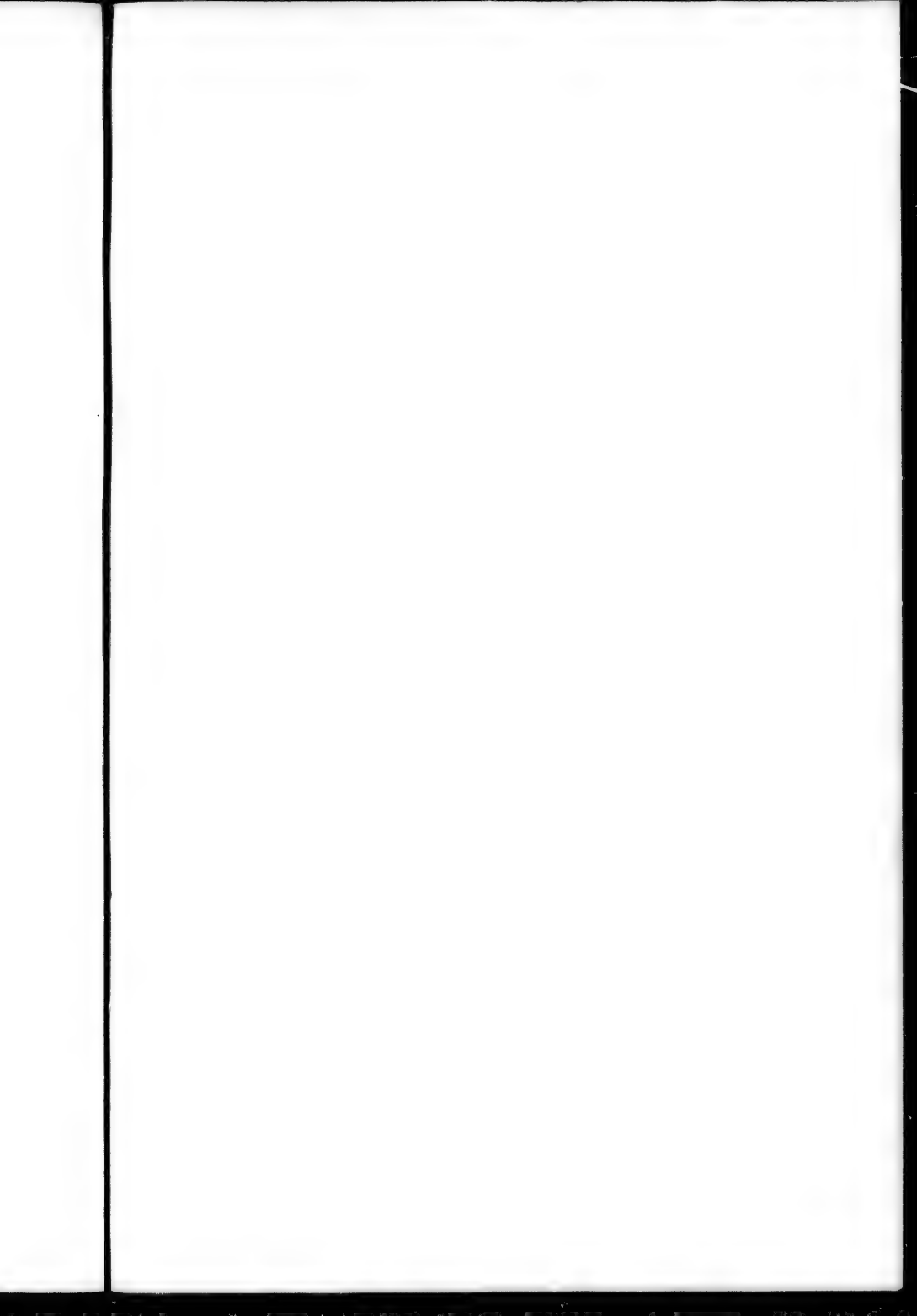
An inspection of the Maps in Coxe indicates how erroneous is the contention that the words "Eastern Ocean" were ever intended to apply exclusively to the waters now known as "Behring Sea;" or that "North-Eastern Sea" and "Eastern Ocean" were two of the names in most cases used to define the water of Behring Sea as distinct from the water of the Pacific Ocean.

In the first Map, it will be seen that the words "Eastern Ocean" are written across the waters which divide the Aleutian Islands, no other name being given for the waters of the Great Ocean below, though the Kurile Islands appear on the Map.

In another Map the words "Eastern Ocean" are written so that the first word "Eastern" is above the Aleutian Islands, and the last word "Ocean" is below those islands.

We are, it must be remembered, asked to examine documents, found in the Russian archives only, to determine the meaning of the words in a Treaty between Russia and Great Britain, and accordingly a letter from the Imperial Minister of Finance addressed to the Board of Administration of the Russian-American Company is produced. This only shows in detail the waters from which foreign vessels were to be excluded had the views of the Company prevailed and the Ukase of 1821 been upheld. About this there is no dispute.

It is significant that, though this letter of 1822 speaks of an intention to exclusively control "the Sea of Okhotsk, Behring Sea, and the Sea of Kamchatka," no attempt to exercise inclusive control was persisted in, in the case of any of



these seas, until 1885, and then only on the part of the United States in a portion of Behring Sea. The letter is further significant in showing that Behring Sea and the Sea of Kamitchatka are included under the name "North-Eastern Ocean."

The words "North-Eastern Ocean" have been seen to cover these seas, the sea below and outside. It was another name for North Pacific, as used in the Russian documents.

This letter and the declaration following it may establish that the Russian Government in the negotiations were not endeavouring to deal fairly with either the United States or Great Britain.

It matters little how this really was, in view of the Treaties and the failure subsequently to modify or change the language thereof.

There occurs, in this connection, a serious difference between the translation appearing in the United States' Case and the translation of the same document as insisted upon in this Counter-Case.

The paragraphs are below:—

(As in the United States' Case.)

"1. That Baron Tuxill von Seroskerken has been appointed as successor to M. Poletica in the position of Imperial Russian Ambassador and Minister Plenipotentiary to the United North American States, and that he has already taken his departure for Washington in order to consult with the Government there as to such measures as may prove satisfactory to both, and meet with mutual consent, avoiding all further difficulties concerning our mutual rights in connection with our possessions on the north-west coast of America. His principal object will be to abolish all cause of complaint on the part of our American Company concerning the intrusive enterprise of certain subjects of the United States, and also to relieve them of a strict observance of the Edict dated the 4th September, 1821, which in every other respect must be sustained.

"2. In order that Baron Tuxill's negotiations may be facilitated and brought to a speedy conclusion, he has been furnished with a transcript of the Russian-American Company's views as to the Rules we could ask the Government of the American United States to observe, with a view to the maintenance of friendly relations without injury to the vast interests of our Company and those of the native inhabitants of that country. The Rules to be proposed will probably imply that it is no longer necessary to prohibit the navigation of foreign vessels, but in the Edict of the 4th September, 1821, and that we were to have been

(British translation.)

"1. Baron Tuxill von Seroskerken is to be appointed Imperial Russian Envoy Extraordinary and Minister Plenipotentiary to the United States of North America in place of M. Poletica, and is to proceed to Washington, without delay, to concert with the American Government measures to be taken by common consent to prevent any further dispute on the subject of the extent of the respective jurisdictions of Russia and the United States on the north-west coast of America, to put an end to the complaints of our American Colonies of the proceedings of certain citizens of the United States, and by this means to make it unnecessary to enforce to their full extent the Regulations of the 4th September, 1821, which we should otherwise have to apply rigorously.

"2. In order that Baron Tuxill may be enabled the more easily to carry out the mission intrusted to him, the Russian-American Company are to furnish me as soon as possible with a statement of the measures which we might call upon the Government of the United States of America to take, in order that the sources from which the Company derive their revenue may not suffer, and in order that the native inhabitants of those regions may not disturb our settlements by carrying on prohibited trade. These measures should be of such a nature as to make it unnecessary for us any longer to insist on the distance stated in the Rules of the 4th September, 1821, to be that

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within which no foreign ship may come, and such as to enable us to confine ourselves to exercising a control over such an extent of water only as is by common custom considered to be under the jurisdiction of any Power which has possession of the seaboard, and to introducing on the coast such a system of surveillance as may be found necessary for the protection of our territory from attack, and for the prevention of illicit trading.

"In communicating to me the Emperor's orders in this matter, the Head of the Foreign Office desires that the Company's statement may be accompanied by an accurate account of the localities where the Russian-American Company has hitherto exercised the right of hunting, fishing, and trading, as well as an indication of the parallel of latitude which can be fixed as the furthest limit of our dominions, without giving rise to remonstrances and pretensions such as those which have lately been evoked

The Head of the Foreign Office adds that, when the Charter granted to the Russian-American Company in 1799 fixed as this boundary the 55th degree of latitude north, and gave permission to the Company to establish new stations even south of this line, except in places belonging to other Powers, no foreign Government objected to these two points, but that, on the other hand, it appears that two English Companies, the North-west Company and the Hudson's Bay Company, have long had trading stations established on the north-west coast of the American continent, beginning from 54° north latitude, and extending, according to some accounts, to 56°.

United States
Case, p. 54

tion over coastwise waters beyond the limits accepted by any other Maritime Power for the whole of our coast facing the open ocean. Over all interior waters, however, and over all waters inclosed by Russian territory, such as the Sea of Okhotsk, Behring Sea, or the Sea of Kamchatka, as well as in all gulfs, bays, and estuaries within our possessions, the right to the strictest control will always be maintained.

"In informing me of the highest will on these points, the Managing Chief of the Ministry of Foreign Affairs expresses the desire to obtain a full and clear descriptive statement of all localities which are at the present day occupied by the Russian-American Company, and over which the same Company is now enjoying its exclusive privilege of trade, navigation, and fishery, in order to make it possible to ascertain definitely the points to which foreign vessels may be admitted without injury to the Company's vested rights.

The Managing Chief of the Ministry of Foreign Affairs adds that when, in the Charter granted to the Russian-American Company in the year 1799, the 55th degree of northern latitude was settled upon as the southern boundary, this line was looked upon as well to the northward of any possessions claimed by other Powers, and one which could safely be changed in case our Russian-American Company should be found occupying territory farther south."

Great stress as to the interpretation of the Treaty is laid upon a declaration of Russia after its execution.

What purports to be an extract from the Protocol dated the 21st July, 1824, of the Conference of a Special Committee of the highest dignitaries in the Russian Empire is set out in the United States' Case.

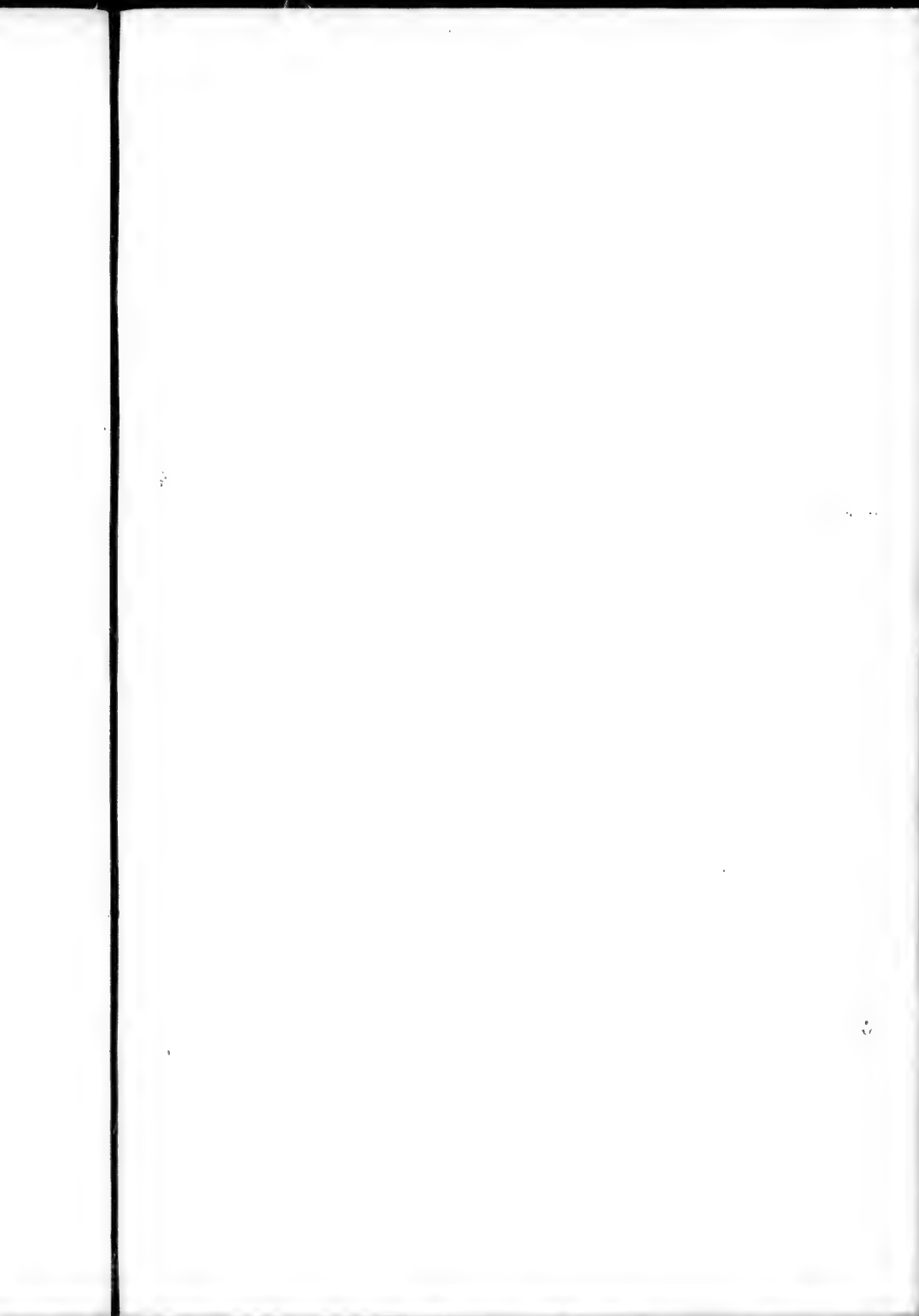
The accuracy of the translation of this document is challenged. The difference between the translation of the United States and in the British Counter-Case will appear below, as far as concerns the extract set out in the United States' Case:—

(United States' translation.)

(British translation.)

7. That since the dominion of Russia over the shores of Siberia and over the Aleutian Islands has long been recognized by all the Powers, there was no reason for mentioning the aforesaid shores and islands in the Articles of the above-mentioned Convention, which only refers to the disputed territory on the north-west coast of America and its adjacent islands, and that, relying on this view, Russia has founded permanent establishments both on the shores of Siberia and on the islands of the Aleutian group; accordingly, American citizens could not, under the 11th Article

That since the sovereignty of Russia over the shores of Siberia and America, as well as over the Aleutian Islands and the intervening seas, has long since been acknowledged by all Powers, these coasts, islands, and seas just named could not have been referred to in the Articles of the above-mentioned Convention, which latter concerns only the disputed territory on the north-west coast of America and the adjoining islands, and that in the full assurance of such undisputed right Russia has long since established permanent settlements on the coast of



Siberia as well as on the chain of the Aleutian Islands; consequently, American subjects could not, on the strength of Article II of the Convention of the 5th (17th) April, have made landings on the coast or carried on hunting and fishing without the permission of our Commanders or Governors. These coasts of Siberia and of the Aleutian Islands are not washed by the Southern or Pacific Ocean, of which mention is made in Article I of the Convention, but by the Arctic Ocean and the Seas of Kamchatka and Okhotsk, which, on all authentic Charts and in all geographies, form no part of the Southern or Pacific Ocean."

This declaration of Russia, made anterior to the Convention with Great Britain and subsequent to that with the United States, appears now for the first time.

It is a declaration contrary to the facts as touching the acknowledgment of the Powers concerning Russia's title in America. Based upon the supposed ownership of the Siberian and American coast, it proceeds to argue that—

"American subjects could not on the strength of Article II of the Convention of the 5th (17th) April have made landings on the coast or carried on hunting and fishing without the permission of our Commanders and Governors."

It is to be observed that this declaration—*ex parte* and incorrect as it is—is based upon a consideration of Article II.

Article II refers to the "Great Ocean" and not to "any part of the Great Ocean commonly called the 'Pacific Ocean,'" which are the words now in question.

Article II, moreover, concerns landing on the coasts. Article I relates to right of navigation or fishing only.

The Case of the United States does not reproduce the request addressed to the Government of Russia which forwarded this declaration, a document of obvious importance.

Enough, however, is stated to show that, after the representations to the Company touching exclusive rights and the intention of the Government to insist upon them, the Treaty of 1824 was read with a far different signification by the Russian Company.

The letter of the Minister of Finance, inclosing the declaration, shows that the Russian Government confined their action to communicating with the United States' Government touching

of the Convention of the 5th (17th) April, either land at the places on those coasts or hunt or fish there without the permission of our Commanders or Governors. Moreover, the shores of Siberia and the Aleutian Islands are washed, not by the South Sea, which is alone mentioned in the 1st Article of the Convention, but by the Northern Ocean and the Seas of Kamchatka and Okhotsk, which, according to all known Maps and geographies, do not form part of the South Sea."

United States'
Case, p. 54

United States'
Case, p. 54; and
Appendix, vol. i,
p. 67.

ril, either land at there without the errors. Moreover, lands are washed, mentioned in the Northern Ocean, which, according, not form part of

United States' Case, Appendix I, p. 71.

Article II, and to the "trade and fishery" upon the coast.

Touching the extent of coast thrown open for trade and fishery, he pointed out that it was limited by latitude $54^{\circ} 40'$ north in the south, and by the Bay Yukutat (or Berry Bay) in the north.

There is a gap in the correspondence given in the Appendix to the United States' Case at this point, and this document of 1824 is the last produced from the Russian archives until those of 1853 are mentioned.

Information is given touching the instructions of Baron Tuyl "to use every means at his command to persuade the Washington Cabinet that, in favouring the limitation about to be proposed . . . there is no intention or desire to give any provocation for further disputes between the two Powers," but the despatches from Baron Tuyl to the Russian Government, or subsequent communications of the result of this negotiation to the Russian-American Company, are not now produced by the United States. The United States deals with the declaration only. The result of it is of some importance.

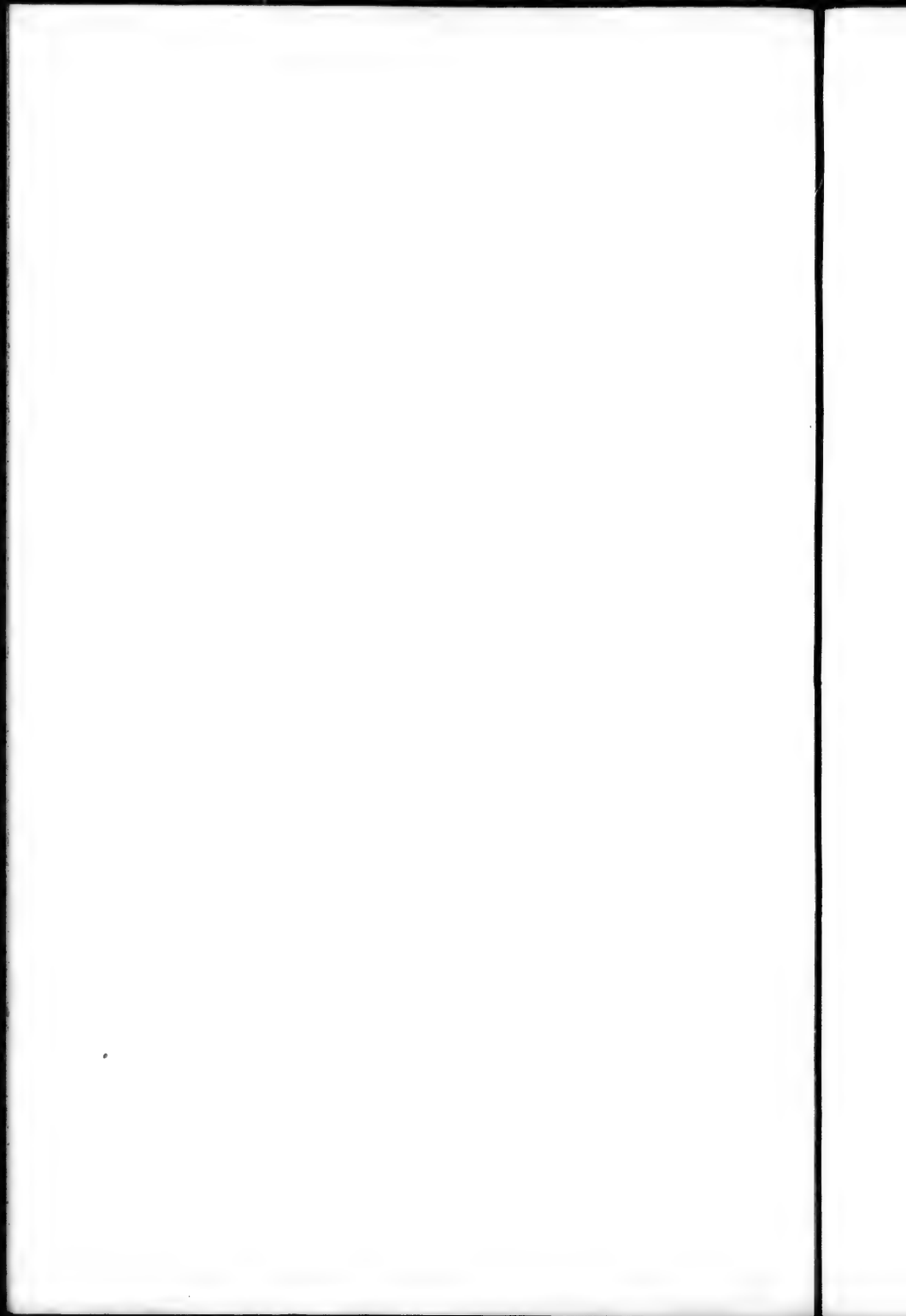
Baron Tuyl in his note did not, however, claim jurisdiction of any kind over Behring Sea; for, after stating that "the Aleutian Islands, the coasts of Siberia, and the Russian possessions in general on the north-west coast of America to (the north of) $59^{\circ} 30'$ of north latitude are positively exempted from the liberty of hunting," he goes on to state that Russia would be satisfied with a limit of 2 marine leagues to the north of that latitude.

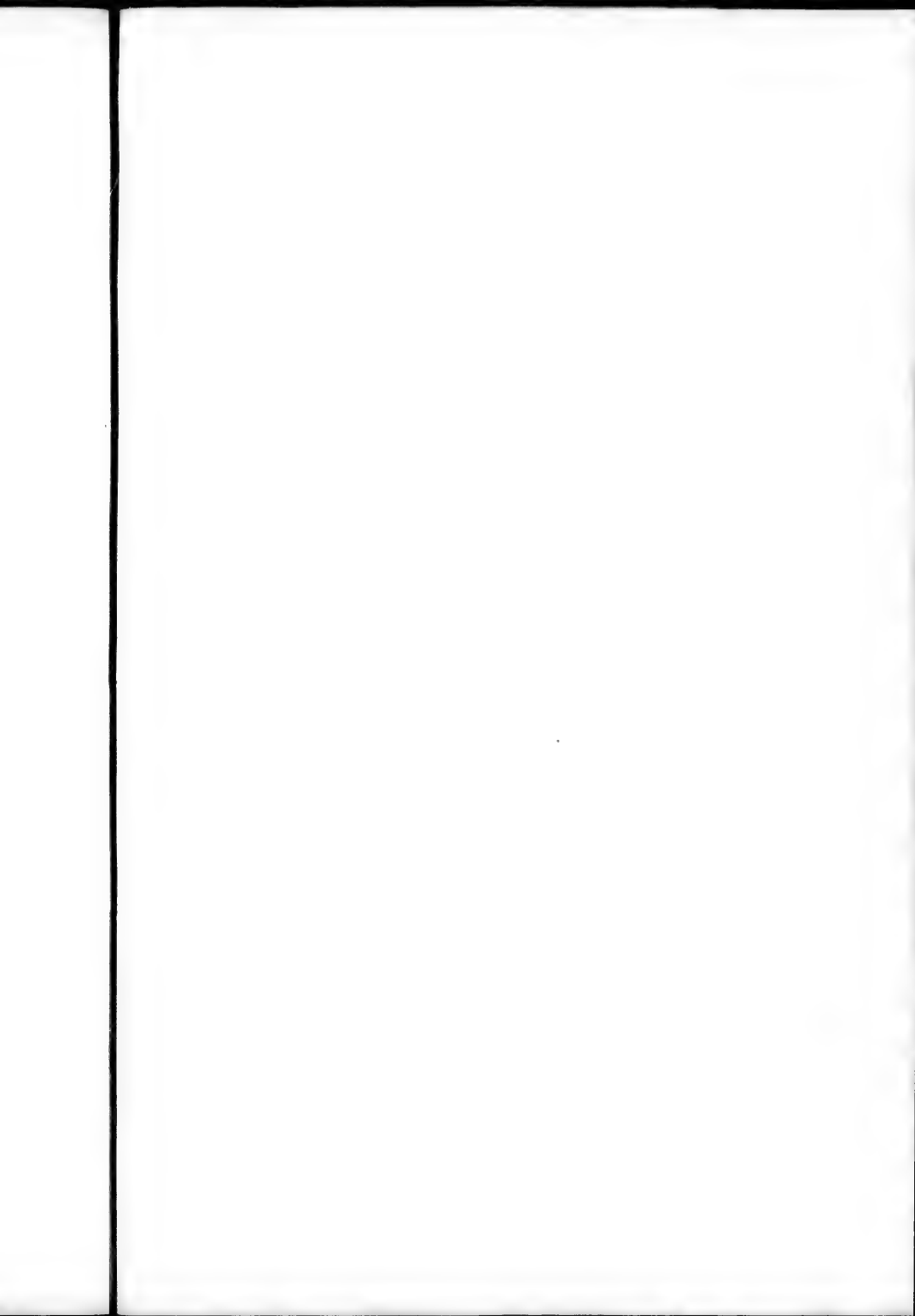
The following is the Minute of note submitted to Mr. Adams by Baron Tuyl, as quoted by Mr. Blaine in his note to Sir J. Pauncesote, 17th December, 1890:—

Explanatory note from Russia.

"Explanatory note to be presented to the Government of the United States at the time of the exchange of ratifications, with a view to removing with more certainty all occasion for future discussions; by means of which note it will be seen that the Aleutian Islands, the coasts of Siberia, and the Russian possessions in general on the north-west coast of America to $59^{\circ} 30'$ of north latitude are positively excepted from the liberty of hunting, fishing, and commerce stipulated in favour of citizens of the United States for ten years.

"This seems to be only a natural consequence of the stipulations agreed upon, for the coasts of Siberia are washed by the Sea of Okhotsk, the Sea of Kamchatka, and the Icy Sea, and not by the South Sea mentioned in the





1st Article of the Convention of the 5th (17th) April, 1824. *The Aleutian Islands* are also washed by the Sea of Kamchatka, or Northern Ocean.

"It is not the intention of Russia to impede the free navigation of the Pacific Ocean. She would be satisfied with causing to be recognized, as well understood and placed beyond all manner of doubt, the principle that beyond 59° 30' no foreign vessel can approach her coasts and islands, nor fish or hunt within the distance of 2 marine leagues. This will not prevent the reception of foreign vessels which have been damaged or beaten by storm."

Mr. Adams' account of this transaction is as follows:—

"Monday, 6th.—Baron Tuyl, the Russian Minister, wrote me a note requesting an immediate interview, in consequence of instructions received yesterday from his Court. He came, and after intimating that he was under some embarrassment in executing his instructions, said that the Russian-American Company, upon learning the purport of the North-west Coast Convention concluded last June by Mr. Middleton, were extremely dissatisfied ("a jeté de hauts cris"), and by means of their influence had prevailed upon his Government to send him these instructions upon two points. One was that he should deliver, upon the exchange of the ratifications of the Convention, an explanatory note, purporting that the Russian Government did not understand that the Convention would give liberty to the citizens of the United States to trade on the coast of Siberia and the Aleutian Islands. The other was to propose a modification of the Convention, by which our vessels should be prohibited from trading on the north-west coast north of latitude 57°. With regard to the former of these points, he left with me a Minute in writing.

"I told him that we should be disposed to do everything to accommodate the views of his Government that was in our power, but that a modification of the Convention could be made no otherwise than by a new Convention, and that the construction of the Convention as concluded belonged to other Departments of the Government, for which the Executive had no authority to stipulate; that if on the exchange of the ratifications he should deliver to me a note of the purport of that which he now informally gave me, I should give him an answer of that import, namely, that the construction of Treaties depending here upon the Judiciary Tribunals, the Executive Government, even if disposed to acquiesce in that of the Russian Government as announced by him, could not be binding upon the Courts, nor upon this nation. I added that the Convention would be submitted immediately to the Senate; that if anything affecting its construction, or, still more, modifying its meaning, were to be presented on the part of the Russian Government before or at the exchange of ratifications, it must be laid before the Senate, and

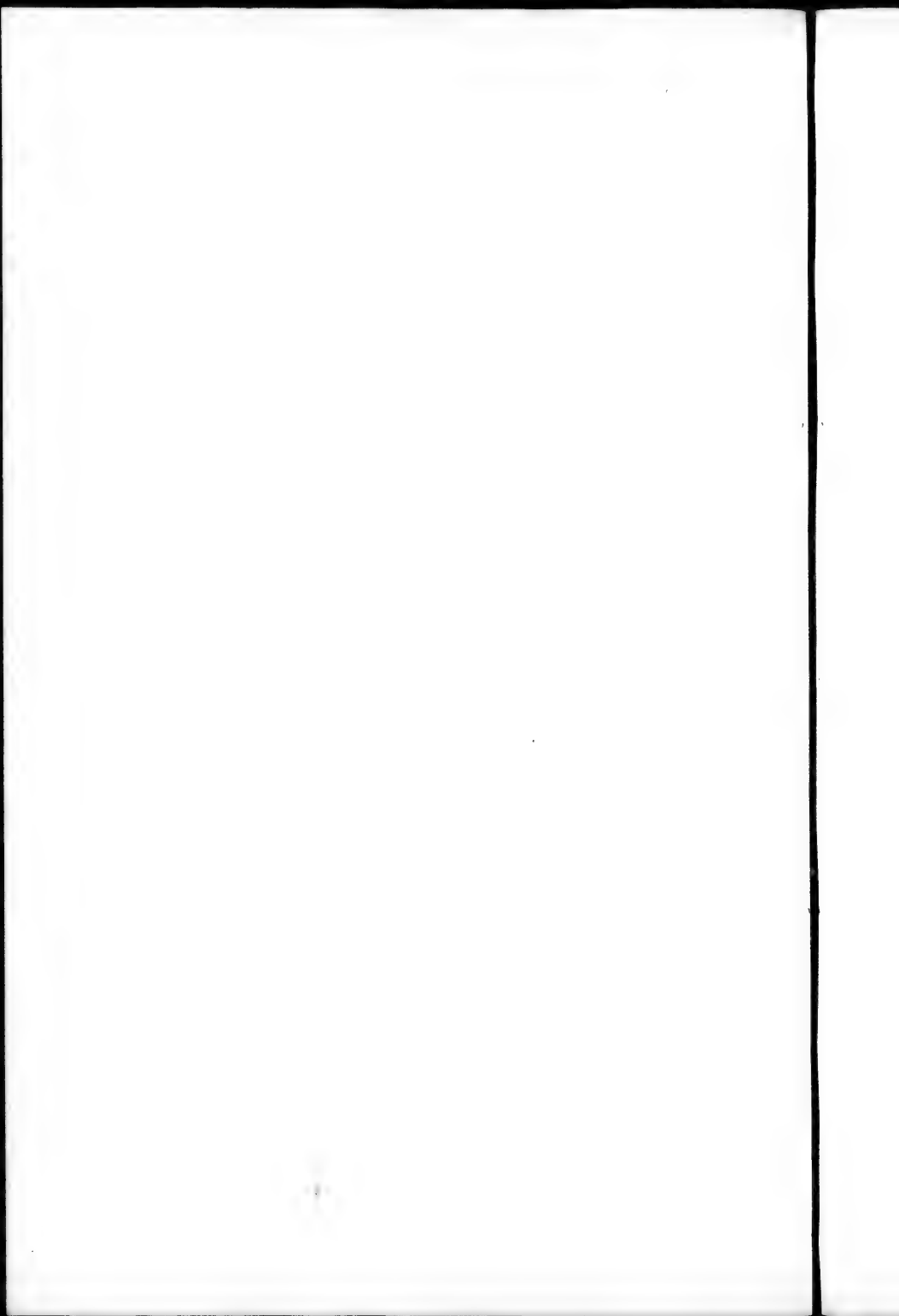
Extracts from
"Memoirs of John
Quincy Adams,"
vol. vi, pp. 425-437.

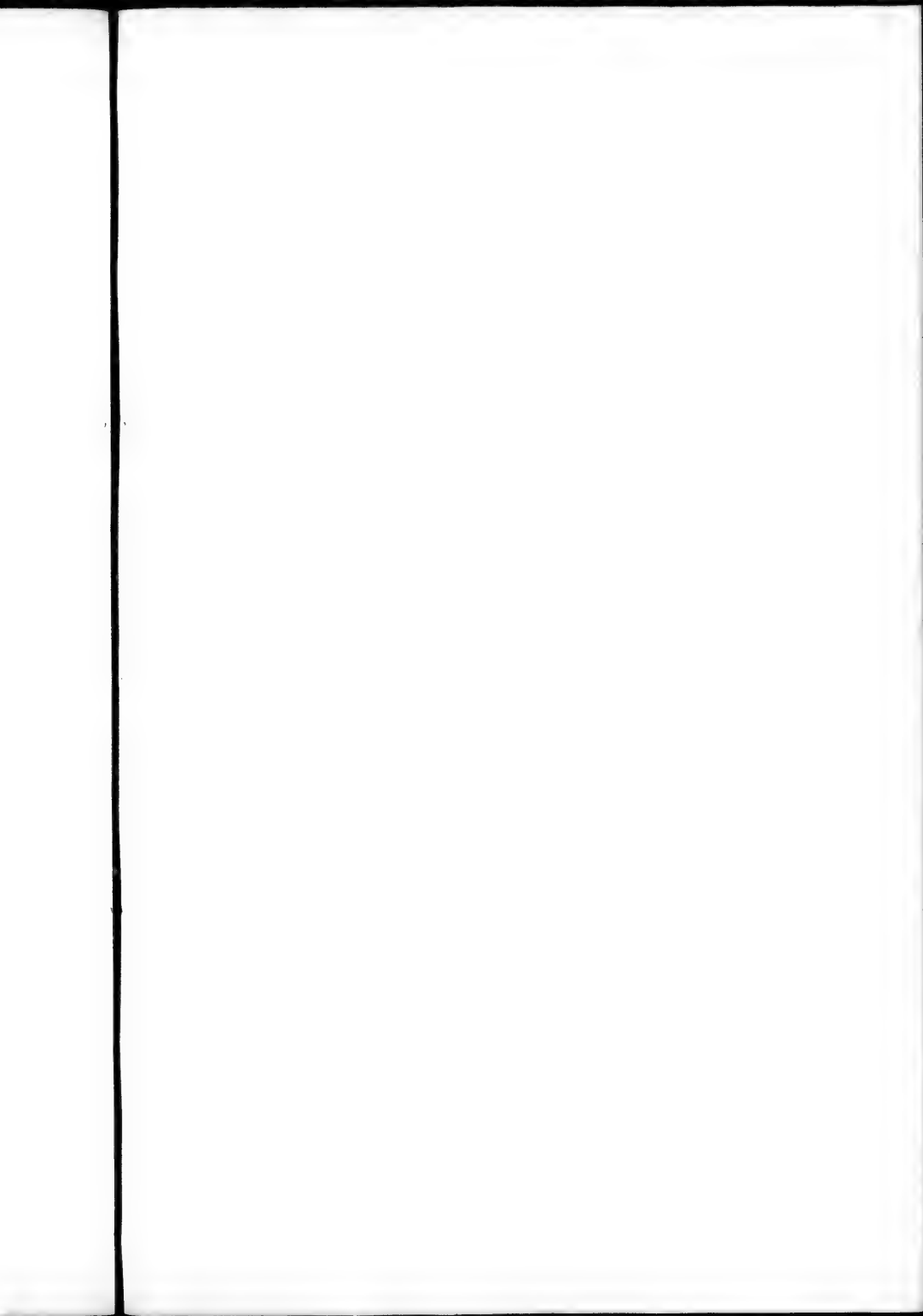
could have no other possible effect than of starting doubts, and perhaps hesitation, in that body, and of favouring the views of those, if such there were, who might wish to defeat the ratification itself of the Convention. This was an object of great solicitude to both Governments, not only for the adjustment of a difficult question which had arisen between them, but for the promotion of that harmony which was so much in the policy of the two countries, which might emphatically be termed natural friends to each other. If, therefore, he would permit me to suggest to him what I thought would be the best course, it would be to wait for the exchange of the ratifications, and make it purely and simply: that afterwards, if the instructions of his Government were imperative, he might present the note, to which I now informed him what would be in substance my answer. It necessarily could not be otherwise. But if his instructions left it discretionary with him, he would do still better to inform his Government of the state of things here, of the purport of our conference, and of what my answer would be if he should present the note. I believed his Court would then deem it best that he should not present the note at all. Their apprehensions had been excited by an interest not very friendly to the good understanding between the United States and Russia. Our merchants would not go to trouble the Russians on the coast of Siberia, or north of the 57th degree of latitude, and it was wisest not to put such fancies into their heads. At least, the Imperial Government might wait to see the operation of the Convention before taking any further step, and I was confident they would hear no complaint resulting from it. If they should, then would be the time for adjusting the construction or negotiating a modification of the Convention; and whoever might be at the head of the Administration of the United States, he might be assured that every disposition would be cherished to remove all causes of dissatisfaction, and to accommodate the wishes and the just policy of the Emperor.

"The Baron said that these ideas had occurred to himself; that he had made this application in pursuance of his instructions; but he was aware of the distribution of powers in our Constitution, and of the incompetency of the Executive to adjust such questions. He would therefore wait for the exchange of the ratifications without presenting his note, and reserve for future consideration whether to present it shortly afterwards, or to inform his Court of what he has done, and ask their further instructions upon what he shall definitely do on the subject. He therefore requested me to consider what had now passed between us as if it had not taken place (*non avenue*), to which I readily assented, assuring him, as I had done heretofore, that the President had the highest personal confidence in him, and in his exertions to foster the harmony between the two countries. I reported immediately to the President the substance of this conversation, and he concurred in the propriety of the Baron's final determination."

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In any event the Report of the Committee, referred to in the United States' Case, proves that, whatever doubts might be raised touching the extent of the Convention, it was not to be denounced.

Subsequent expressions of opinion from the Russian Government, referred to already, prove conclusively the complete failure to qualify the interpretation of the language of the Treaties, or the conclusion that they included the waters of Behring Sea.

It has been seen that after the remonstrances of the Company and the attempt of Russia to secure a qualification of the Convention of 1824, the language in question was repeated in the Treaty with Great Britain the following year.

On the 25th January, 1825, a fortnight after the ratifications had been exchanged, Baron Tuyl, at Washington, presented an *explanatory note* to Mr. Adams. No action appears to have been taken on either side. This evidently was the communication referred to in Baneroff's "Alaska," which is said to have been communicated to all the Representatives of that nation abroad, but which search made in the Foreign Office in London shows was *never received by Great Britain*. Mr. S. Canning wrote Mr. G. Canning, 3rd (15th) April, 1825:—

"... Referring to the American Treaty, I am assured, as well by Count Nesselrode as by Mr. Middleton, that the ratification of that instrument was not accompanied with any explanations calculated to modify or affect in any way the force and meaning of its Articles. But I understand that, at the close of the negotiation of that Treaty, a Protocol, intended by the Russians to fix more specifically the limitations of the right of trading with their possessions, and understood by the American Envoy as having no such effect, was drawn up and signed by both parties. No reference whatever was made to this paper by the Russian Plenipotentiaries in the course of my negotiation with them, and you are aware, Sir, that the Articles of the Convention which I concluded depend for their force entirely on the general acceptance of the terms in which they are expressed."

Mr. Blaine to Sir J. Paunceforte, December 17, 1890, Appendix, vol. iii, p. .

British Case, p. 545.

British Case, Appendix, vol. ii, p. 61.

In 1829, when the Charter of the Russian-American Company was confirmed, it is clear the Russian Government felt unable to assume the position taken by the Committee on the 4th September, 1824, since no precise limits of Behring Sea were referred to—while the Treaties

United States Case, p. 61.

United States'
Case, Appendix,
vol. 1, p. 26.

of 1824 and 1825 are mentioned as limiting the operation of the Ukase of 1821.

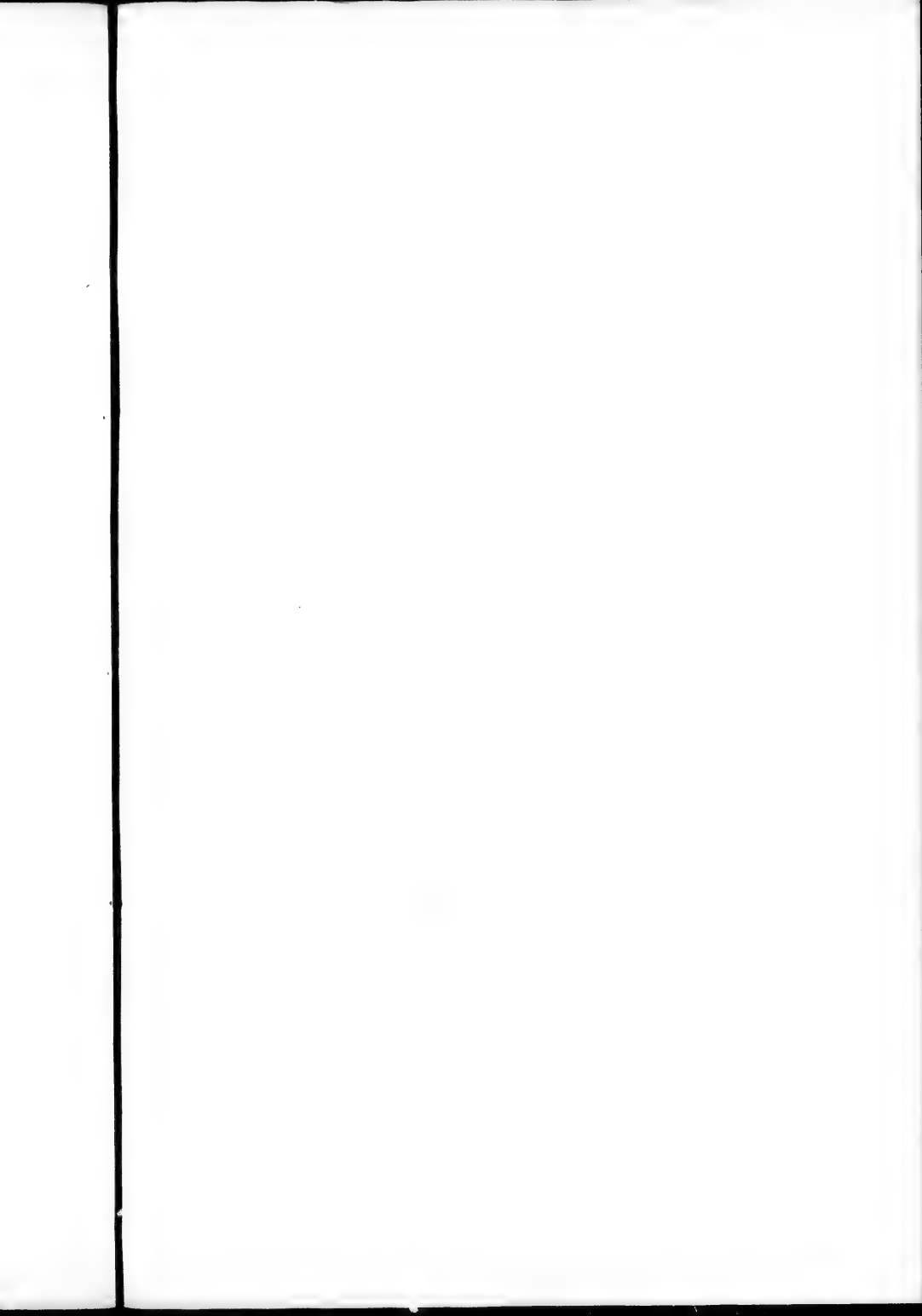
So in the Charter of [1842 (or 1844) no reference is found to Behring Sea, nor any sheet of water corresponding to it, as a closed sea.

The eastern boundary for the application of the Charter alone is defined.

Section 3 of this Charter establishes that the rights of the Company were "to the exclusion of all *Russian* subjects."

If Behring Sea is included in the Treaty between Great Britain and Russia, the question is admittedly at an end. And if the Treaties left the question of jurisdiction over that sea where they found it, the Case of Great Britain is unanswered.

Russia had no exclusive jurisdiction over Behring Sea, which was free to the world, and it is unnecessary, therefore, to show that she has conceded or abandoned any rights in it under the words of the Treaty. Even assuming that she has not done so, it is impossible to maintain that by not obtaining such concession Great Britain abandoned and conferred upon Russia these rights to which in common with all other nations she is entitled by the general law, and which Russia had unwarrantably claimed.



(E.)

It is contended in the Case of the United States :—

"e (1). That the best geographers have at all times distinguished this body of water from the ocean lying of it (by conferring upon it some separate name).

"e (2). That the body of water known as Behring Sea was not included in the phrase 'Pacific Ocean' as used in the Treaty of 1825."

These contentions are, it is alleged, borne out by (a) Maps, Charts, and the writings of navigators at the time of and prior to the negotiations; (b) by Treaties above named resulting therefrom; also by the negotiations themselves and the text of the Treaties, and further by express declarations of the Russian Government during the negotiations and after the conclusion of the Treaties.

In the British Case it is on the other hand shown, chiefly by citations from standard authorities, that Behring Sea was generally, and indeed almost universally, recognized as part of the Pacific Ocean, both before and at about the time of the Ukase of 1821, and the Treaties of 1824 and 1825, a circumstance which, if it had been intended to exclude Behring Sea from the operation of the Treaties in question, would have rendered it absolutely necessary to do so specifically and in terms.

British Case, p. 72
et seq.

Evidence is also adduced in the British Case of the continued usage of the term "Pacific Ocean" as including Behring Sea in years following the conclusion of the Treaties and down to the present day.

Ibid., p. 66 *et seq.*

The geographical sketch of Behring Sea, as contained in the "Case" of the United States, commences as follows :—

"Bering Sea is the body of water lying between the Arctic Ocean and the North Pacific Ocean. . . . It is sometimes referred to and treated as a great landlocked sea."

In the margin is a reference to Findlay's "North Pacific Directory" (2nd edition).

The second edition of Findlay's Directory was not available; the third edition, however, does not describe Behring Sea as "the body of water lying between the Arctic Ocean and the North

Pacific Ocean," although it refers to it on p. 684 as an "extensive landlocked sea." This description is not in accordance with the views of geographers generally as shown elsewhere.

The Peninsula of Alaska, the sketch states—

'consists of a more or less level tract interrupted by single mountain peaks or cluster of peaks. Between these peaks, especially toward the western extremity, are low-lying marshy gaps which form portages, used by the natives for carrying their boats across from the Pacific Ocean to Bristol Bay.'

In the margin is a reference to Réclus' "Géographie," vol. xv, p. 201.

The last sentence quoted conveys the impression that Bristol Bay is not in the Pacific Ocean, and, therefore, that Behring Sea is not a part of the ocean.

Turning to p. 201 of vol. xv, Réclus' "Géographie," the exact words are found to be:—

"... The peninsula mountains of Alaska ... are cut from place to place by very low sills, portages—'perenossi' in Russian—which boatmen, indeed, use for the transportation of their boats from one slope to the other."

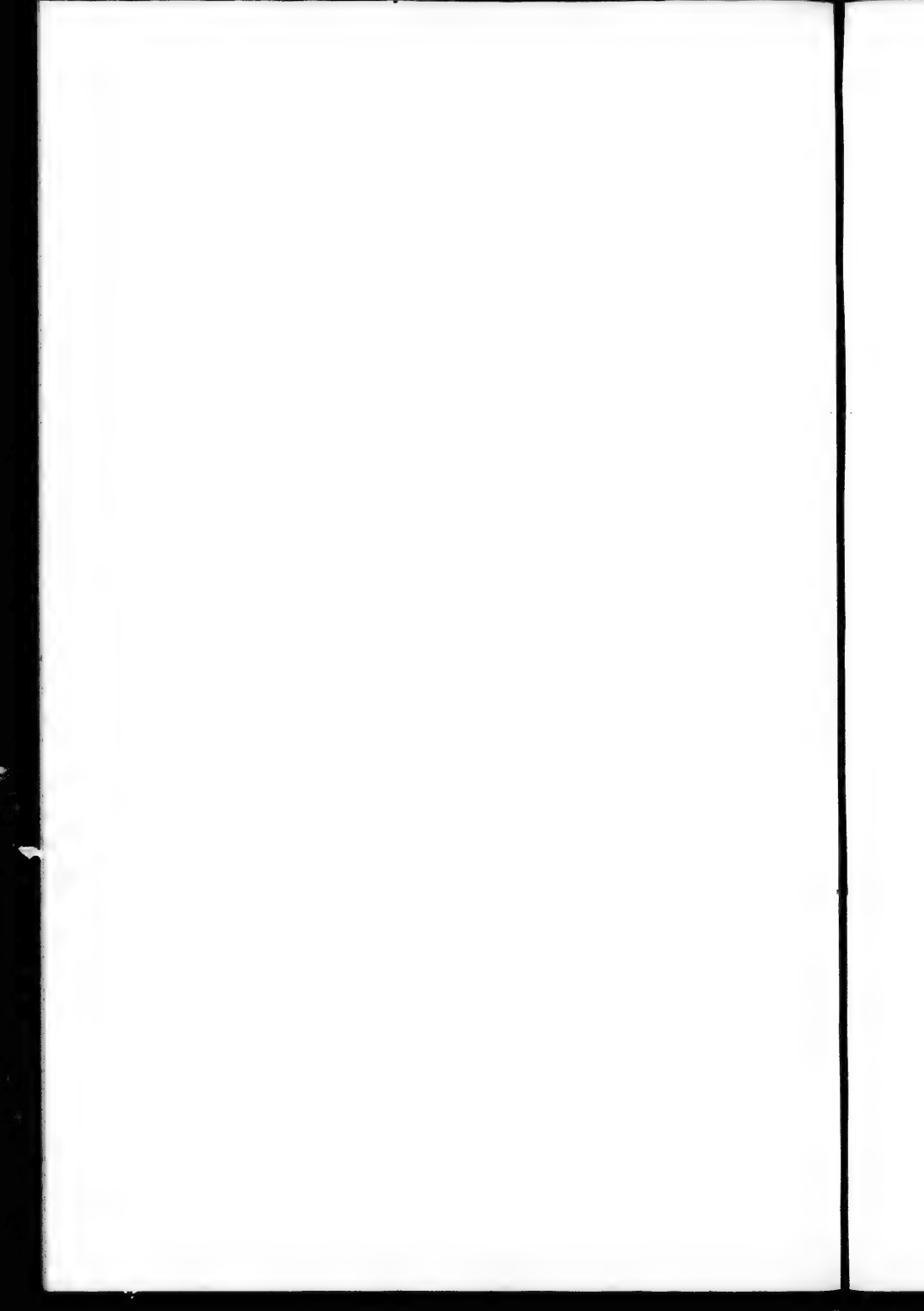
There is no mention in Réclus of the Pacific Ocean or of Bristol Bay. The quotation in the sketch is again incorrect.

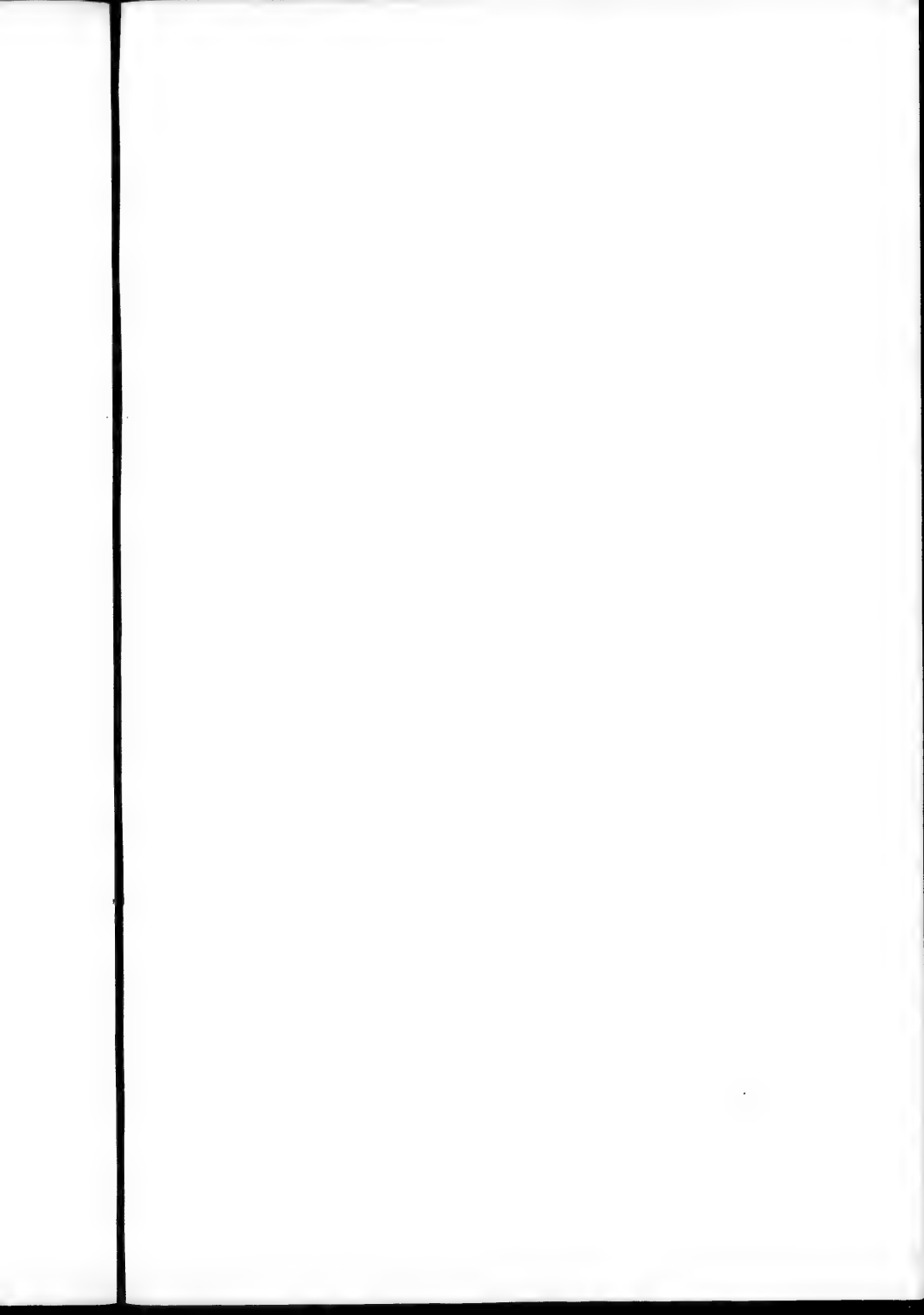
When describing the Aleutian Islands, it should be stated that they consist of four groups separated by wide intervals. Their names are Fox, Andreanow, Rats, and Near Islands (Réclus).

It is further stated in the sketch:—

"The straits or passes separating the islands are of various widths, those in the easterly half being generally narrow and but few of them available for navigation. The most important are Unimak Pass, 11 miles wide, and Amukta or 'Seventy-two' Pass, 42 miles wide."

Like other portions of the sketch, this one, although not inaccurate, is misleading, unless elucidated by further explanations. The two passes mentioned may be the most important in the sense that, being the most easterly, they are those generally used by ships hailing from the United States or British Columbia, but there are many wider openings between the islands. The name of "pass," conveying as it does a notion of a narrow passage, can hardly be applied to all





the openings in question, many of which are very wide.

The portion of the description last quoted should be amended as follows:—

The largest of the Aleutian Islands are near the coast of America. In proceeding westward they become smaller, and the openings between them wider, until they end at Attu Island, 370 miles from the coast of Kamchatka. In the Fox Islands there are only a few straits, the most important being the Unimak, 11 miles wide.

From the end of the Fox Islands to the coast of Asia the openings 20 miles wide or over are:—

	Miles.
Unimak to Kagamil	24
Chuginadak to Unalaska	20
Amukta to Seguam	42
Amelia to Seguam	20
Andreanow to Rata	55
East of Semisopochnoi	35
Kyaka to Agattu (a small island 4 miles long in the middle)	160
Attu to Copper	205
Copper to Behring	44
Behring to Kamchatka	110
Total	715

It is thus seen that, on the southerly limit of Behring Sea from the end of the Fox Islands to the coast of Asia, a distance of 1,220 miles, or about the distance from Paris to the Black Sea, there are 715 miles of open sea, or a little more than the distance from Paris to Vienna, the remaining portion consisting of a number of islands separated by about twenty openings, each less than 20 miles in width.

Referring to the easterly part of Behring Sea, the sketch states:—

"A peculiar feature of Bering Sea is the extensive bank of soundings which stretches off for 250 or more miles from the American coast, rendering the easterly portion of the sea very shallow."

The existence of such banks in the oceans is not unusual in the vicinity of the coasts; as an instance may be given the banks of Newfoundland.

Of the depth of Behring Sea it is said:—

"The Charts show that throughout one-third of the sea the depth of the water does not generally exceed 50 fathoms, and they also show that the average depth of

the whole sea is very considerably less than that of the adjoining sea."

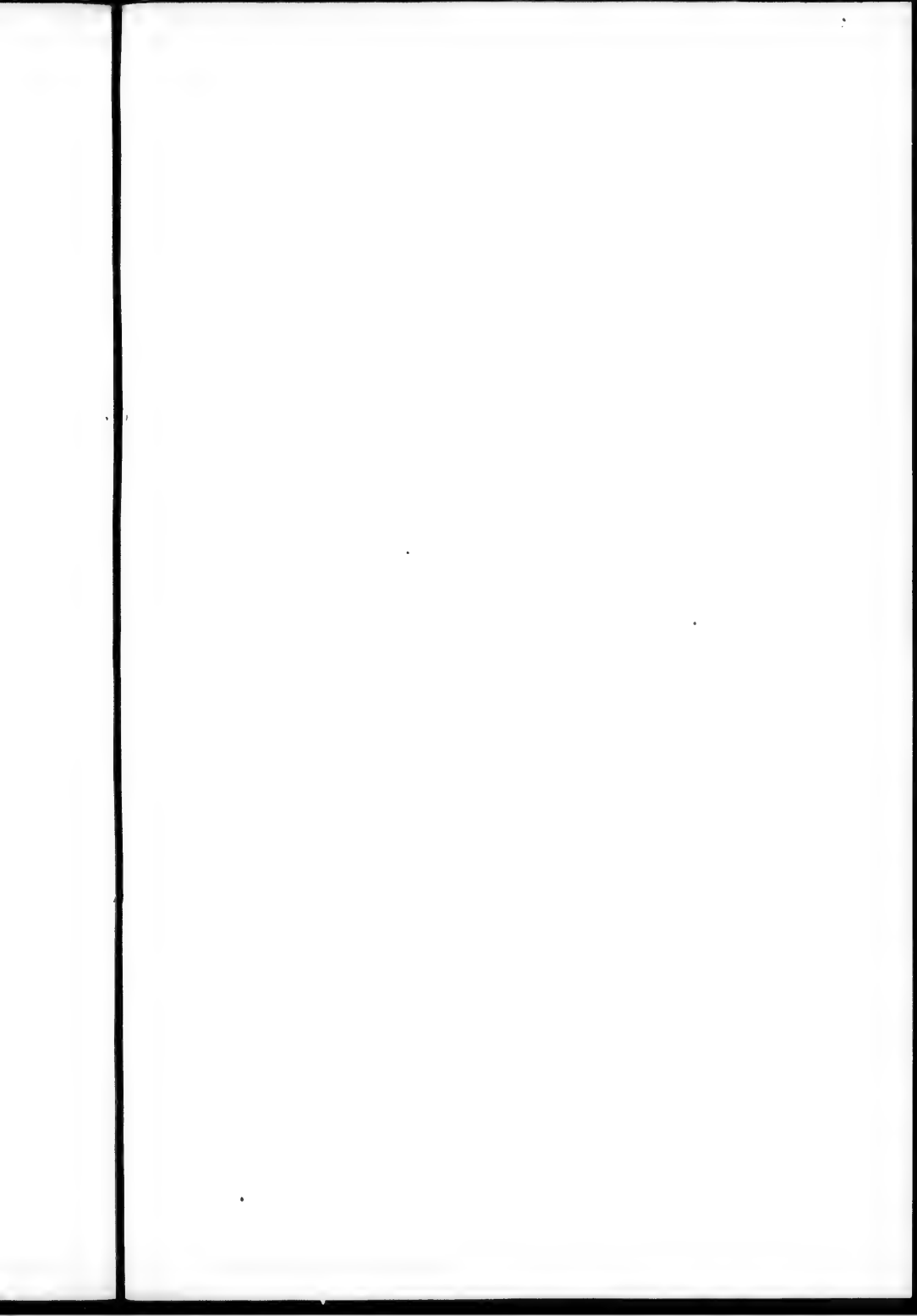
Here again the statement, although correct, is misleading. It so happens that the adjoining sea is the deepest spot on the earth: it is known as the "Tuscarora Deep," from the United States' ship "Tuscarora," which obtained there the enormous sounding of 4,655 fathoms, over $5\frac{1}{2}$ miles. The remark that the average depth of Behring Sea is considerably less than the depth of this depression could be applied with equal strength to any other part of the oceans.

The bottom of the Pacific Ocean is somewhat uneven, varying from about 1,500 fathoms between the southern end of America and Tahiti to about 3,000 fathoms, with a few depressions of 4,000 fathoms and over in the westerly half of the ocean. South of 60° of south latitude no depths exceeding 2,000 fathoms have yet been found.

The soundings are not yet sufficiently numerous to give a proper idea of the average depth of the main body of the ocean, but this can be obtained indirectly from the rate of propagation of waves. It was thus found that the mean depth from Iquique in Chile to the Sandwich Islands was 2,330 fathoms, and everything indicates that this is about the average depth of the ocean at a distance from the continents.

The General Chart of Alaska published by the United States' Coast Survey, which has been used throughout in preparing this Report, gives only a few soundings in the extreme easterly corner of the deep portion of Behring Sea, the greatest being 2,147 fathoms; the remaining deep portion is a blank on the Map. Vivien de St. Martin, on p. 498 of vol. iv of his "Dictionary," states that a sounding of 4,940 metres (2,700 fathoms) was obtained north of the Commander Islands; it is not shown on the Coast Survey Map. These few soundings and the shape of the Tuscarora depression would seem to indicate that the latter extends into Behring Sea, which may, after all, be one of the deepest portions of the ocean. Of course, this is only a matter of conjecture; all that can be said at present with the few soundings yet obtained is that a considerable portion of Behring Sea, nearly one-half, is not inferior in depth to the main body of the ocean.

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In support of the special assertion that the Pacific Ocean did not include Behring Sea as shown by "a study of the Maps, Charts, and writings of navigators at the time of and prior to the celebration of these Treaties," it is stated that "a list of these Maps and Charts is appended," from which it will be seen that geographers conferred upon Behring Sea "some separate name in most cases, either that of Sea of Kamtchatka, Behring Sea, North-Eastern Sea, or Eastern Ocean."

United States' Case, pp. 52, 53.

It is submitted, however, that the list cannot properly be regarded as representing the usage of geographers, even on the narrow ground of the nomenclature of oceans, seas, &c., as printed on the Maps in question; for this list is, in reality, merely a selected series of such Maps as in respect to their marking correspond, in a negative sense (or in other words do not disagree), with the contention which it is wished by the United States to uphold.

Ibid., Appendix I, P. 287.

Without entering into any great detail respecting the numerous voyages of discovery in this region, which, in the first instances, were principally due to Russian efforts from the Asiatic coast, it is comparatively easy to place on record the salient features of this branch of the subject; and to trace its progress, more particularly by means of the Maps published from time to time in illustration of the results of the various explorers.

Historical note on the circumstances under which Behring Sea has come to be so named.

The first published Map in which that part of the Asiatic coast, including Kamtchatka, and extending to and beyond Behring Straits, was represented, was that in illustration of Behring's first voyage, in 1737, in D'Anville's "Atlas." It is reproduced by Mr. W. H. Dall, in the "National Geographical Magazine," Washington, 1890. At this time neither the Commander Islands nor the Aleutian Islands were known, but the ocean to the east of the Asiatic coast is named *Partie de la Mer Dormante*, the name, as engraved on the Map, extending from a point to the west of the extremity of the Peninsula of Kamtchatka, in a north-easterly direction, to about the position which St. Matthew Island is now known to occupy, or to the centre of Behring Sea.

After Behring's second expedition, in which the Commander himself miserably perished, but in the course of which the American coast was reached, and the Commander and Aleutian

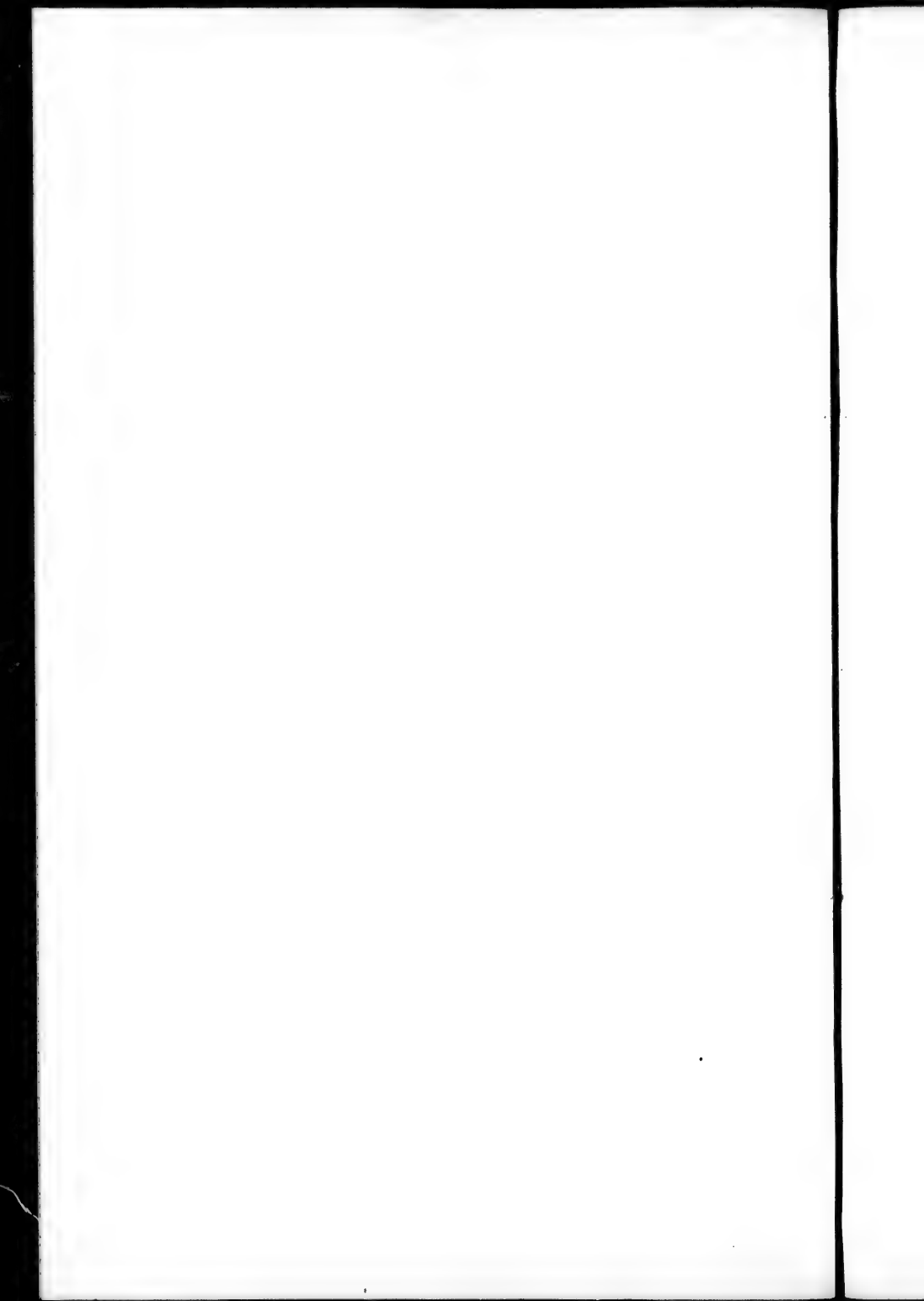
Islands in part discovered, we find a Map published by Müller, the historian and geographer of the expedition. This is entitled, in the English translation of Müller's work, published in London in 1761, "A Map of the Discoveries made by the Russians on the North-west Coast of America," published by the Royal Academy of Sciences at St. Petersburg, and republished in London by Thomas Jeffreys.

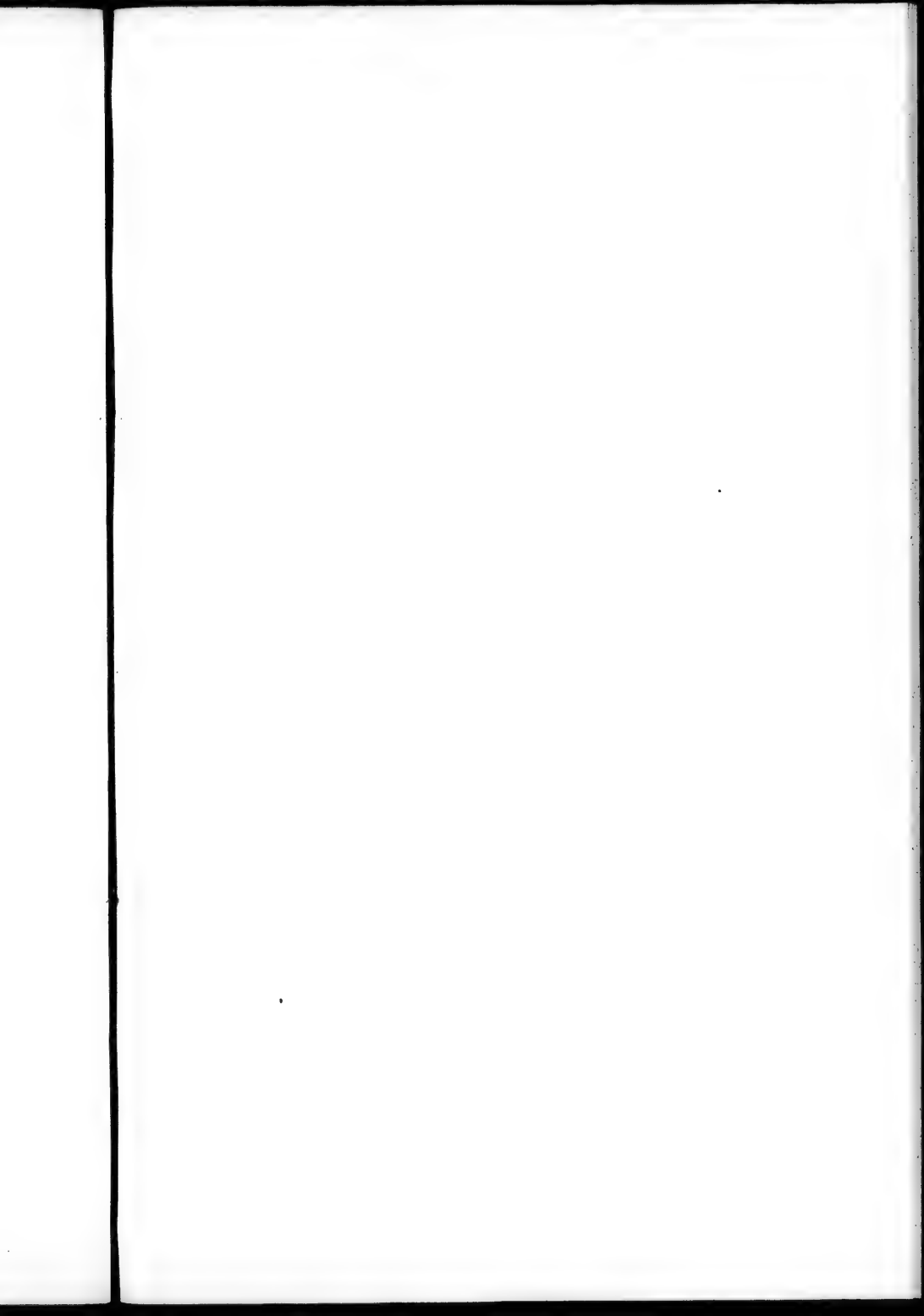
In this Map the islands now known as the Aleutian Islands and the Commander Islands are indicated very inaccurately, and the greater part of what is now known as Behring Sea is occupied by a great conjectural promontory of the American continent, leaving a comparatively narrow and sinuous body of water or strait running in a direction proximately parallel to the Asiatic coast, and separating the two continents. The southern portion of this is named on the Map *Sea of Kamtchatka*, the northern *Sea of Anadir*, in equivalent characters. Behring Strait, as now known, appears without name, while the wider ocean to the south is named *Great South Sea* or *Pacific Ocean*.

A reproduction on a smaller scale of the same Map appears in the "London Magazine" for 1764. This is entitled, "A New Map of the North-east Coast of Asia and North-west Coast of America, with the late Russian Discoveries." It repeats the nomenclature and all the errors of the original Map, but employs the term *Great South Sea* only, the addition "or Pacific Ocean" being omitted.

After the date of the publication of Cook's third voyage, in 1784, what is now known as Behring Sea began to appear on Maps in something like its true form and proportions, and in the Map accompanying the official record of his voyages, of the date mentioned, we find that sea without special distinctive name, and simply regarded as a part of the Pacific Ocean, though the names *Olutorski Sea*, *Beaver Sea*, and *Gulf of Anadir* are engraved in parts of it close to the Siberian shores, and *Shoal Water* and *Bristol Bay* appear as local names of equivalent rank on the opposite American coast.

From this date onward the usage became very varied. Many Maps continued to appear, till 1840 or later, upon which no name of a distinctive kind was given to Behring Sea, while upon others it became customary to extend the





originally local name *Sea of Kamtchatka* to the whole of this body of water. Doubtless because of the ambiguity attaching to this particular name, from its originally strictly local use, at later dates it began to be customary to employ Behring's name for the sea now so called, till at the present time that name may be said to have entirely superseded the older one, and to have passed into common use.

Following on this change, the name *Sea of Kamtcha/ka* was changed to *Gulf of Kamtchatka*, and relegated to its original place on the shore of the peninsula of the same name, while the names *Olutorski* and *Anadir* likewise became confined to the respective gulfs on the Siberian coast. For the most modern usage in this respect, see United States' Hydrographic Office Chart No. 68, 1890, and British Admiralty Chart No. 2460, 1889.

It is very noteworthy, however, in studying any series of Maps chronologically arranged, that up to the middle of the present century Behring Sea is frequently without any general name, while the adjoining Sea of Okhotsk is in almost every instance clearly designated.

Had the circumstances with respect to the nomenclature of Behring Sea been different, and had that body of water been consistently supplied with a distinctive name on all Maps, it would, however, by no means necessarily follow that this was intended to show that it was not a part of the Pacific Ocean. An ocean may, and in all cases actually does, include numerous seas and gulfs as subordinate divisions. The mere fact that the name of the North Pacific Ocean, or equivalent name in use at different periods, is not usually engraved partly upon the area of Behring Sea in the Maps, affords no valid argument for such separation. The name of this ocean is generally found to be engraved, in large characters, upon its widest and most open part somewhere to the south of the 50th parallel, and between that parallel and the Equator. This usage follows as a result of the actual form of the ocean, and the necessity of giving due prominence to its name.

The United States' Government has, in this controversy, attached importance to the very early employment of some distinctive name for Behring Sea, and reference has been made to several of the older Maps.

It is, however, submitted that even in

Maps specially referred to by Mr. Blaine in his letter of December 17, 1890.

restricting the argument to Maps, the important question is that relating to the Maps and Charts of the years immediately antecedent to 1824 and 1825, in which the Conventions dealing with the Ukase of 1821 were concluded.

To such Maps the negotiators doubtless referred.

Reverting, however, to the earlier Maps specially instanced by the United States' Government, it will be found that even these do not bear out the assertions based by Mr. Blaine upon them.

A Map showing Cook's voyages, and published in 1784, is first referred to as showing the "*Sea of Kamtchatka*" in "absolute contradistinction to the *Great South Sea* or Pacific Ocean."

This is doubtless the Map included in the list attached to the despatch, and said to have been published by William Faden in 1784, a Map which has so far eluded our search.

Turning, however, to the Maps in the officially published account of Cook's third voyage, of the same date, both those in the quarto and octavo editions, and those also in French and German translations of somewhat later date, it is found that Behring Sea appears absolutely and markedly *without any distinctive name*.

The Map published in the "London Magazine" in 1784, which is next referred to, is a reduction of Müller's Map, which is also particularly cited.

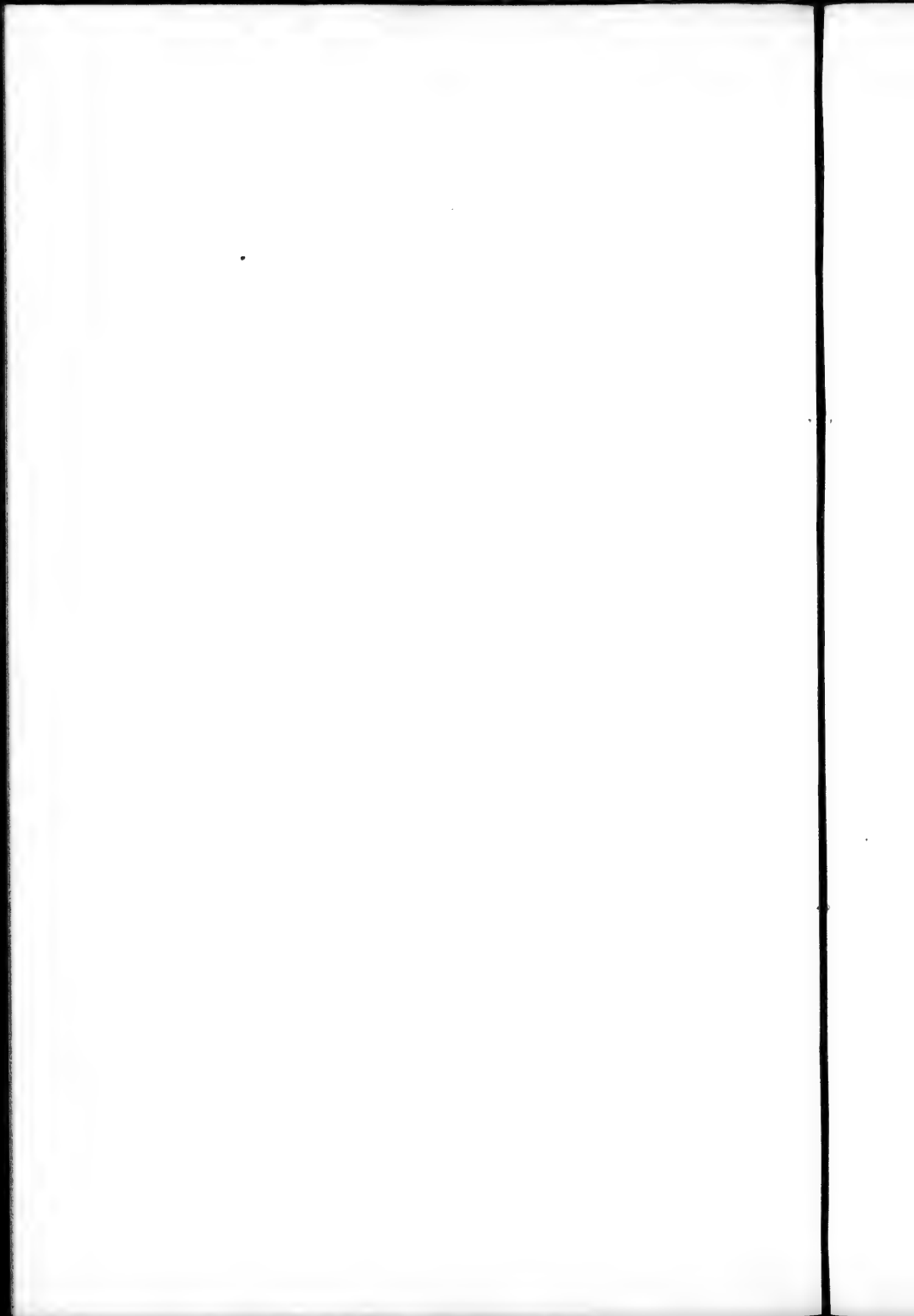
The circumstances under which the names *Sea of Kamtchatka* and *Sea of Anadir* appear on these Maps have been noted on a previous page, and are such as to show that these names, nor either one of them, can be justly referred to as applying to the area of Behring Sea as now known.

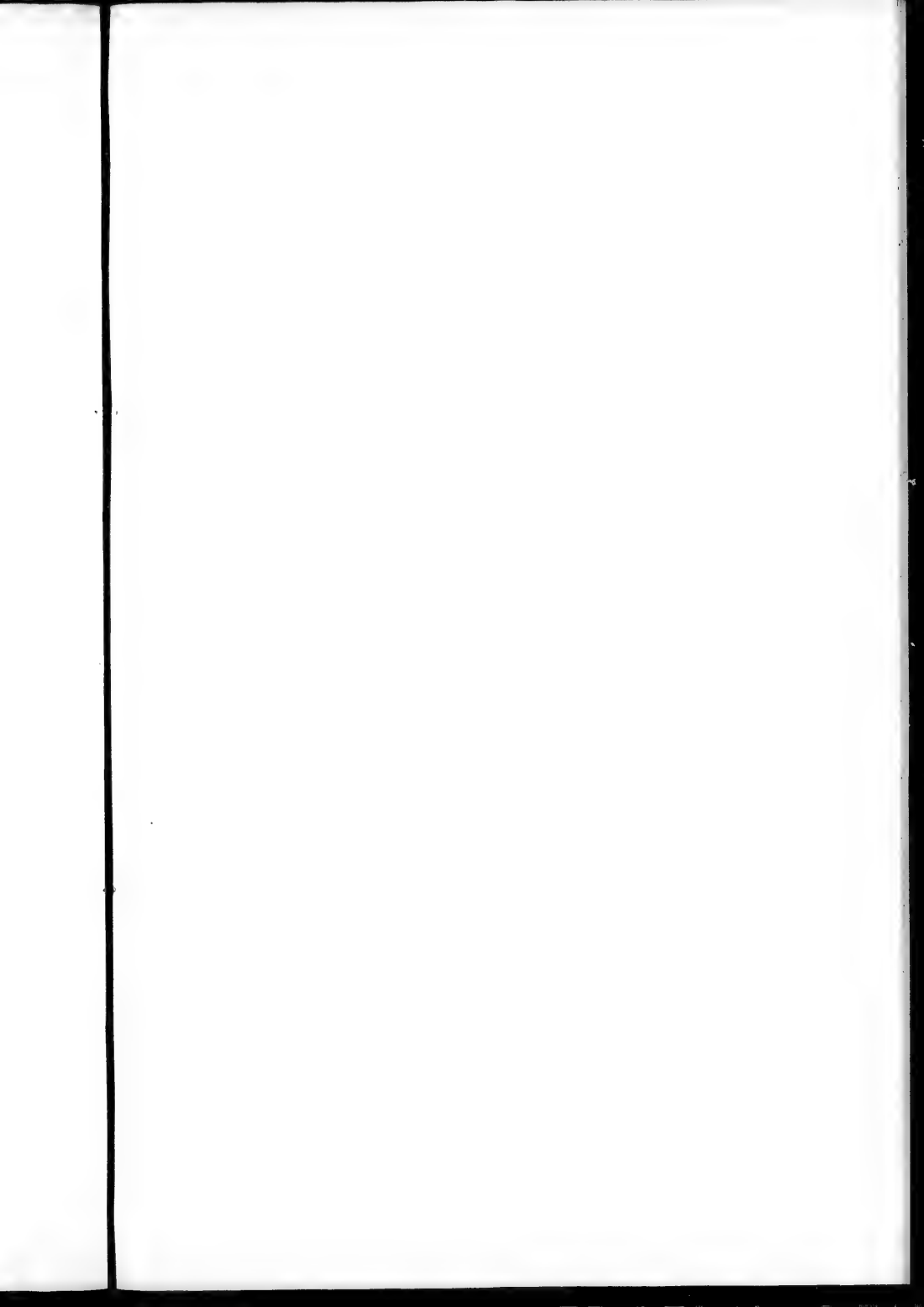
In further endeavouring to maintain his position as to the essential separateness of Behring Sea from the Pacific Ocean, as understood by geographers of the time, Mr. Blaine adds an enumeration of a number of Maps as "Inclosure B" to his letter above referred to.

This list of 105 Maps, though apparently formidable from its very length, is found to extend from the year 1743 to the year 1820, both inclusive, and consists solely of those Maps upon which a special designation of some kind is supposed to be found for Behring Sea.

As already stated, this proves nothing with regard to the relation of Behring Sea to the

Maps catalogued in
"Inclosure (B),"
Mr. Blaine to Sir
J. Pauscefote,
December 17, 1890.





Pacific as a whole; while it is further observable that, in compiling the list, many Maps of very doubtful or imperfect character have been heterogeneously brought together.

Thus, in respect to Cook's explorations, but a single obscure Map is cited, while the official and original Maps are ignored, as has already been explained.

Again, from Thompson's large Atlas of date 1817 but a single Map is cited, and this without such reference as can enable it to be identified; while, as a matter of fact, in this Atlas, Behring Sea appears upon three Maps as the *Sea of Kamichatka*. On three other Maps this name is evidently confined to the waters immediately adjacent to the peninsula of the same name, and on two, the greater part of Behring Sea is included without any name.

Under date 1819, a Map by Burney is quoted as showing the name *Sea of Kamichatka* applied to Behring Sea, but the only Map by that author and of that date which we have been able to find is a "Chart of the north coast of Asia and of the sea to the north of Behring Strait," in which the greater part of Behring Sea is included, but without name, though the northern portion of the Sea of Okhotsk, also included, is prominently named.

Still, again, under 1825 a Map in Butler's Atlas (doubtless No. 16) is quoted as showing the name *Sea of Kamichatka*, while the first Map in that Atlas upon which Behring Sea appears without name (though the *Sea of Okhotsk* and other similar seas are named) is ignored.

This particular criticism applies, however, to but a small portion of the entire list, since the whole of the Maps in the list have not been examined.

Touching the Maps alluded to in the course of the correspondence, and which may, therefore, be supposed to have been those referred to by the negotiators, it may be mentioned that a Map was inclosed by Sir C. Bagot in despatch from St. Petersburg, dated the 17th November, 1821. Sir C. Bagot writes:—

"I have the honour to transmit to your Lordship, under separate cover, an English translation of the Ukase, and I, at the same time, inclose a Map of the north-west coast of America and the Aleutian and Kurile Islands, which has been published in the Quartermaster-General's Department

British Case,
Appendix, vol. ii.
p. 4.

here, and upon which I have marked all the principal Russian Settlements."

Of this Map, dated 1802, the original copy exists in the Foreign Office, in London.

Sir C. Bagot to Mr. G. Canning, writes from St. Petersburg under date the 19th August, 1823, referring particularly to the position of Sitka:—

British Case,
Appendix, vol. ii,
p. 40.

"Sitka is not laid down very precisely in the Map published in 1802 by the Quartermaster-General's Department here, or laid down at all in that of Arrowsmith, which has been furnished to me from the Foreign Office."

The first Map is that above noted.

The second must either have been Arrowsmith's *Map of America*, 1822, or Arrowsmith's *Chart of the Pacific Ocean*. The latter is a large Map in nine sheets, which ran through various editions from 1798 to 1844. On the edition of 1832 (in British Museum Library), the years antecedent in which corrected editions were published are noted, and one of these years is 1822.

This particular edition has not been found, but for all purposes connected with the present discussion, the editions of 1810 and 1832 (both in British Museum) are identical.

It appears, therefore, that the two Maps principally referred to in the course of the negotiations were the Russian Map of 1802 and "Arrowsmith's Map," the latter being either that of the *Pacific Ocean* or that of *America*. These two Maps, English and Russian respectively, are, in fact, the only ones mentioned in connection with the general questions raised by the Ukase of 1821. On neither of them did the name of Behring Sea appear, though the sea itself is there.

The following are further definitions to those already quoted in the British Case found in the gazetteers, dictionaries, and geographers of the world, both of the present and old dates, touching the Pacific Ocean, Behring Sea, Kamtchatka, &c.:—

Citations from various authorities bearing on the geographical use of the terms "*Pacific Ocean*," "*Behring Sea*," &c.

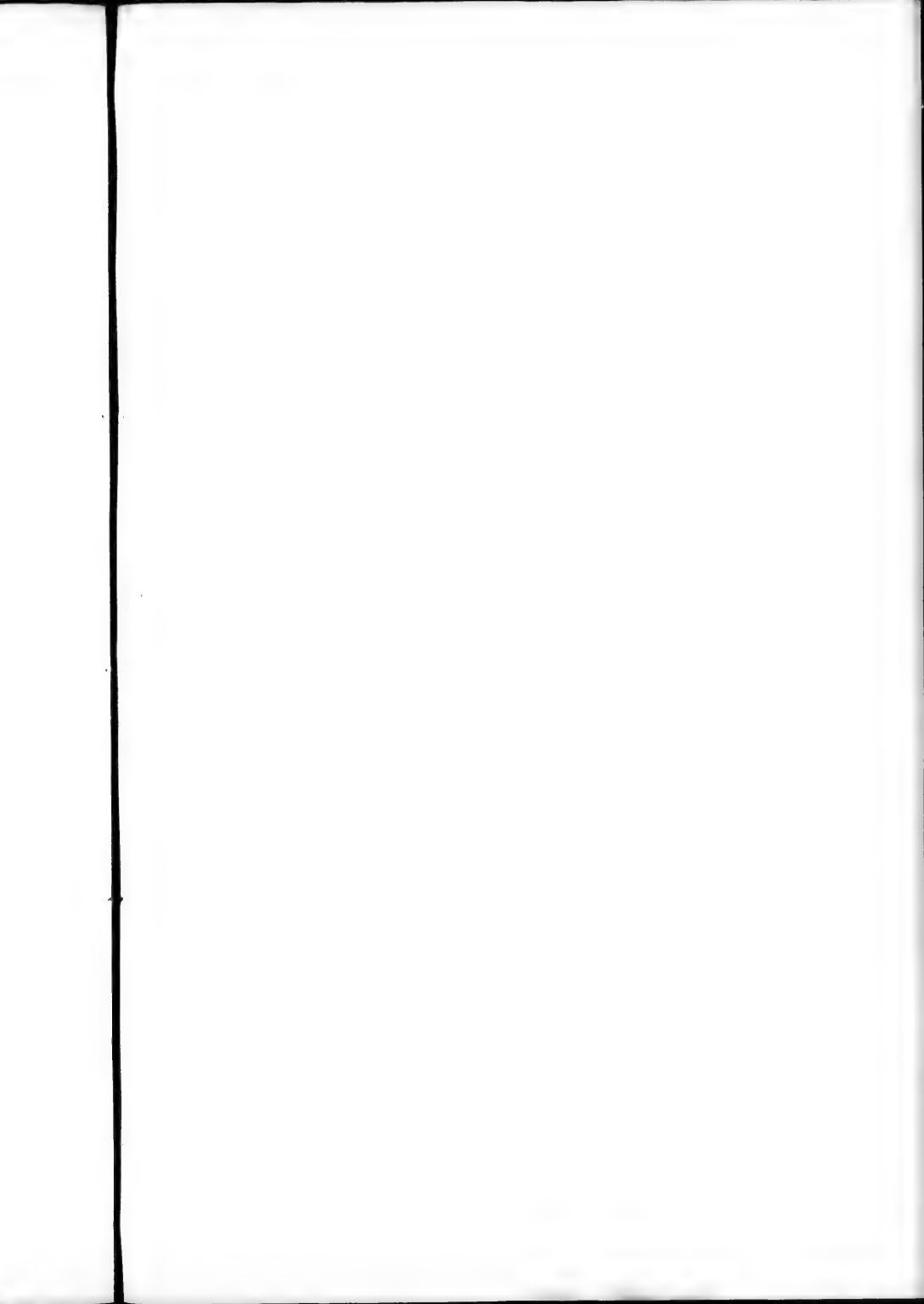
McCulloch's "*Geographical Dictionary*." London, 1866.
Vol. iii, p. 497. English work.

Blackie's "*Imperial Gazetteer*." London, 1874. Vol. ii,
p. 586. English work.

* "*Pacific Ocean*.—Stretches northward through 132 degrees of latitude to Behring's Strait, which separate [*sic*] it from the Arctic Ocean."

"Boreal or N., extending from Behring's Strait or the Arctic Circle to the Tropic of Cancer. . . . In the N. the Pacific gradually contracts in width; the continents of America and Asia stretching out and approximating, so

* First twelve references should be verified.



as to leave the comparatively narrow channel of Behring's Strait as the only communication between the Pacific and the Arctic Oceans. Between the strait on the N., the Aleutian Islands on the S., and the remarkable peninsulas of Alaska on the E. and Kamtschatka on the W., one of the largest and best defined branches of the Pacific is the Sea of Behring."

"Extending from the Arctic to the Antarctic Circle, through 126° of latitude." *Johnston's "Dictionary of Geography."* London, 1877. English work.

"... It narrows especially towards the north, where it communicates with the Arctic Ocean by Behring Strait."

"Behring's Island, the most westerly of the Aleutian group in the North Pacific, in 55° 22' N. latitude, 166° E. longitude. It is rocky and desolate, and is only remarkable as being the place where the navigator Behring was wrecked and died in 1741. Population 2500." *"Encyclopedia Britannica."* Ninth edition. Edinburgh, 1875-90. Vol. iii, p. 569.

"Behring Strait, the narrow sea between the north-east part of Asia and the north-west part of North America, connecting the North Pacific with the Arctic Ocean." *Ibid.*

"Behring Strait . . . which connects the N. Pacific with the Arctic Ocean. . . ." *Blackie's "Imperial Gazetteer."* London, 1874. Vol. i, p. 858.

"Behring Island is situated in the North Pacific."

"*English Cyclopædia.*" London, 1854-62. Geography. Vol. i, p. 967.

"Kamtschatka, a peninsula projecting from the north-eastern part of Asia into the Pacific Ocean." *Ibid.* Vol. ii, p. 354.

"*Extent.*—The Pacific Ocean (*formerly called the South Sea, and sometimes still so named by the French and Germans (la Mer Sud; Sudsee, Australocean), with whom, however, la Mer (l'Océan) Pacifique, and Grosser Ocean, or Stillas Meer, are the more usual designations) is bounded on the north by Behring Strait and the coasts of Russia and Alaska; on the east by the west coasts of North and South America; on the south the imaginary line of the Antarctic Circle divides it from the Antarctic Ocean, while its westerly boundary is the east coast of Australia, the Malay Archipelago separating it from the Indian Ocean, and the eastern coasts of the Chinese empire. Some modern geographers place the southern limit of the Atlantic, Pacific, and Indian Oceans at the 40th parallel, and name the body of water which surrounds the earth between that latitude and the Antarctic Circle the Southern Ocean.

"Although differing from the Atlantic in its general form, being more nearly land-locked to the north, the Pacific Ocean resembles it in being open to the south, forming, in fact, a great projection northwards of that vast Southern Ocean of which the Atlantic is another arm.

"The Pacific is the largest expanse of water in the world, covering more than a quarter of its superficies, and comprising fully one-half of its water surface.

"It extends through 132 degrees of latitude, in other words, it measures 9000 miles from north to south. From

* In the English edition this forms a foot-note.

east to west its breadth varies from about 40 miles at Behring Strait, where Asia and America come within sight of each other, to 8500 miles from California and China on the Tropic of Cancer, and to more than 10,000 miles on the Equator, between Quito and the Moluccas, where the ocean is the widest. The area has been variously estimated at from 50,000,000 to 100,000,000 square miles; but, defining its boundaries as above, Keith Johnston, from careful measurements, estimated it, with probably a near approach to the truth, at 67,810,000 square miles."

Worcester's "Dictionary of the English Language." Philadelphia, 1857. Page 1969.

"Behring Sea.—A part of the Pacific Ocean N. of the Aleutian Islands."

"Gazetteer of the World." London, 1885. Vol. I, p. 199.

"Is that part of the North Pacific Ocean between the Aleutian Islands . . . and Behring Strait."

Malham's "Naval Gazetteer." London, 1795. Vol. II, p. 4.

"Kamschatka Sea is a large branch of the Oriental or North Pacific Ocean."

Ibid. Vol. , p. 42.

"Beering's Straits, which is the passage from the North Pacific Ocean to the Arctic Sea."

Brookes, R. "General Gazetteer." 1802.

"Beering's Island. An island in the Pacific Ocean (Behring's Island is in Behring's Sea.)"

"Kamschatka. Bounded east and south by Pacific."

Montefiore. "Commercial Dictionary." 1803.

"Kamschatka. Bounded on the north by the country of the Koriaes, on the east and south by the North Pacific Ocean, and on the west by the Sea of Okotsk."

"Geographical Dictionary." London, 1804.

"Beering's Island. In the North Pacific Ocean."

Crutwell, C. "New Universal Gazetteer." 1808.

"Beering's Island. An island in the North Pacific Ocean."

"Kamtschatka. River, which runs into the North Pacific Ocean."

"Kamtschatka. Peninsula, bounded on the east and south by the North Pacific Ocean."

Maugnall, R. "Compendium of Geography." 1815.

"Islands in the Eastern or Great Pacific Ocean; Bhering's Isle."

"Edinburgh Gazetteer." Edition 1822. Vol. I, p. 432.

"Behring's Island. An island in the North Pacific Ocean."

"General Gazetteer." London, 1823.

"Beering's Island. In the North Pacific Ocean."

"New London Universal Gazetteer." 1826.

"Beering's Island. In the Pacific."

"Penny National Library Geography and Gazetteer." 1830.

"Beering's Island. In the North Pacific Ocean."

"The Gazetteer of the World." Thomas Jeck. London, 1836.

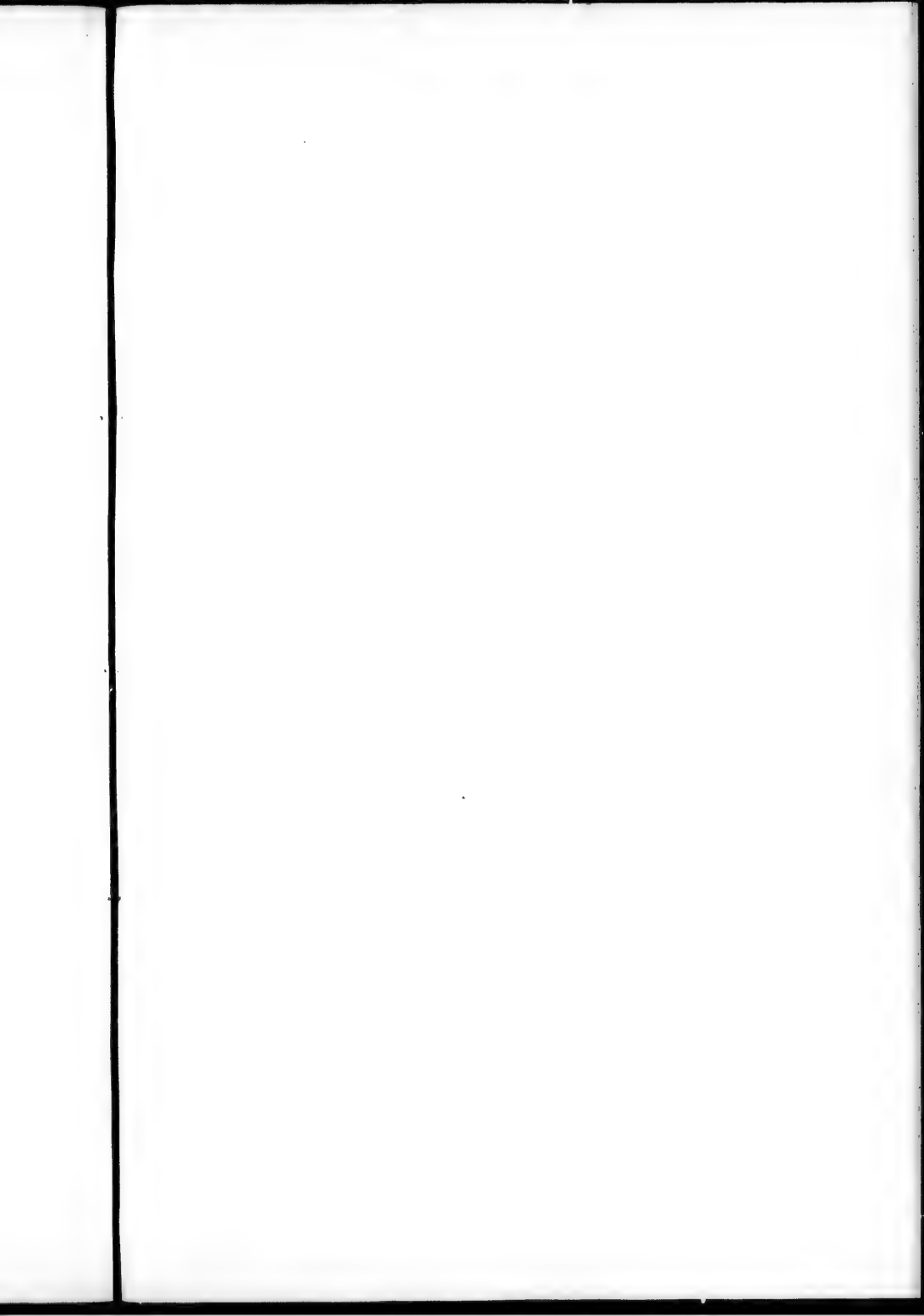
"Behring Sea, or Sea of Kamtschatka, is that part of the North Pacific Ocean between the Aleutian Islands, in latitude 55° north, and Behring Strait, in latitude 66° north, by which latter it communicates with the Arctic Ocean."

Fullarton's "Gazetteer of the World." 1836.

"Behring's Island. An island in the North Pacific Ocean."

"Cyclopædia of Geography," by Chas. Knight. 1856.

"Behring's Strait, which connects the Pacific with the Arctic Ocean, is formed by the approach of the continents of America and Asia."



"Behring's Strait. The narrow sea between the north-east part of Asia and the north-west part of North America, connecting the North Pacific with the Arctic Ocean." *"Encyclopædia Britannica."* 1875. St. Martin.

"Behring, or Bhering. A strait, sea, island, and bay, North Pacific Ocean." Bryce and Johnston. *"Cyclopædia of Geography."* London and Glasgow, 1880.

"Bering's Meer. Der nordöstlichste Teil des Stillen Ocean's." Brockhaus' *"Conversations Lexicon."* Leipzig, 1882.

"Behring's Sea. North-east part of the Pacific between Asia and America." *"Pocket Encyclopædia."* Sampson Low. 1888.

"Behring Strait connects the Pacific with the Arctic Ocean." Chambers' *"Encyclopædia."* 1888.

"Behring Sea. A part of the Pacific Ocean, commonly known as the Sea of Kamchatka."

"Russian America comprises the whole of the continent of North-west America west of longitude 141° west and a strip on the coast extending south to latitude 55° north, bounded on the east by British America, south and west by the Pacific Ocean, and north by the Arctic Ocean and the following island groups," &c.

The following letter, addressed to Mr. Robert Rayner by Professor Alexander Supan, and published by Mr. Rayner in an article by him on the Behring Sea question in the New York "Evening Post" of the 11th March, 1891, is of particular interest, as embodying the opinion of one of the most eminent geographical authorities of the day on the subject of the relations of Behring Sea to the Pacific :—

(Translation.)

*"Justus Perthes' Geographical Institute,
Editorial Rooms,*

"Office of Petermann's Communications.

"Honoured Sir, *"Gotha, November 10, 1887.*

"In answer to your honoured letter of the 24th October, I beg to make the following remarks :—

"Behring's Sea is considered by all geographers as a part of the Pacific Ocean, and there cannot be [the] least doubt with regard to this, [from] however different principles of division one may start.

"Behring's Strait is the natural topographical boundary of two great sea basins, the Pacific and the Arctic, and this all the more, as it nearly coincides with the northern Polar Circle. In addition, there is the consideration that sea arms shut off by chains of islands are just one of the characteristic marks of the western part of the Pacific Ocean. As little as one can detach the Sea of Okhotsk or the Sea of Japan from the Pacific Ocean, just so little can one consider Behring's Sea as independent. A comparison with such inland waters as Delaware Bay or the Sea of Azov appears entirely inadmissible.

"It is, however, [certainly] a different question how [what] the Treaty Powers thought on this point in 1824. Up to the year 1845 there was great [much] caprice and divergence in the division and appellation of the great seas. However, the wording of the Treaty of 1824 shows that one was already acquainted with the division of Buache (1752), for he was the first one to introduce the name Great Ocean. In this division Behring Sea belonged to the 'Mer Septentrionale du Grand Océan.' Forster, the celebrated companion of Cook, also is beyond doubt in this regard (see [his] collected writings, vol. iv, p. 9, ff.).

"It must be noted that in Fleurien's time (year eight of the first French Republic) the two ice seas (Arctic and Antarctic) were not yet separated [were not yet looked upon as separated] from the other three oceans. When Fleurien introduced this separation he took the Polar Circles as boundaries, and to this the British Commission of 1845 also acceded, as is well known. Consequently, here also Behring's Sea appears as part of the Pacific Ocean.

"Hoping that these remarks will be sufficient for you, I remain, &c.

(Signed) "PROF. DR. ALEX. SUPAN,
"Editor of *Petermann's Communications*.

"Mr. Robert Rayner,
"Salem, Massachusetts."

In reply to a request sent by Dr. George M. Dawson to Professor Supan for a copy of the above letter, as originally written in German, that gentleman has been so kind as to write further as follows:—

"(Translation.)

"*Justus Perthes' Geographical Institute,*
"Gotha, July 15, 1892.

"Most honoured Sir,

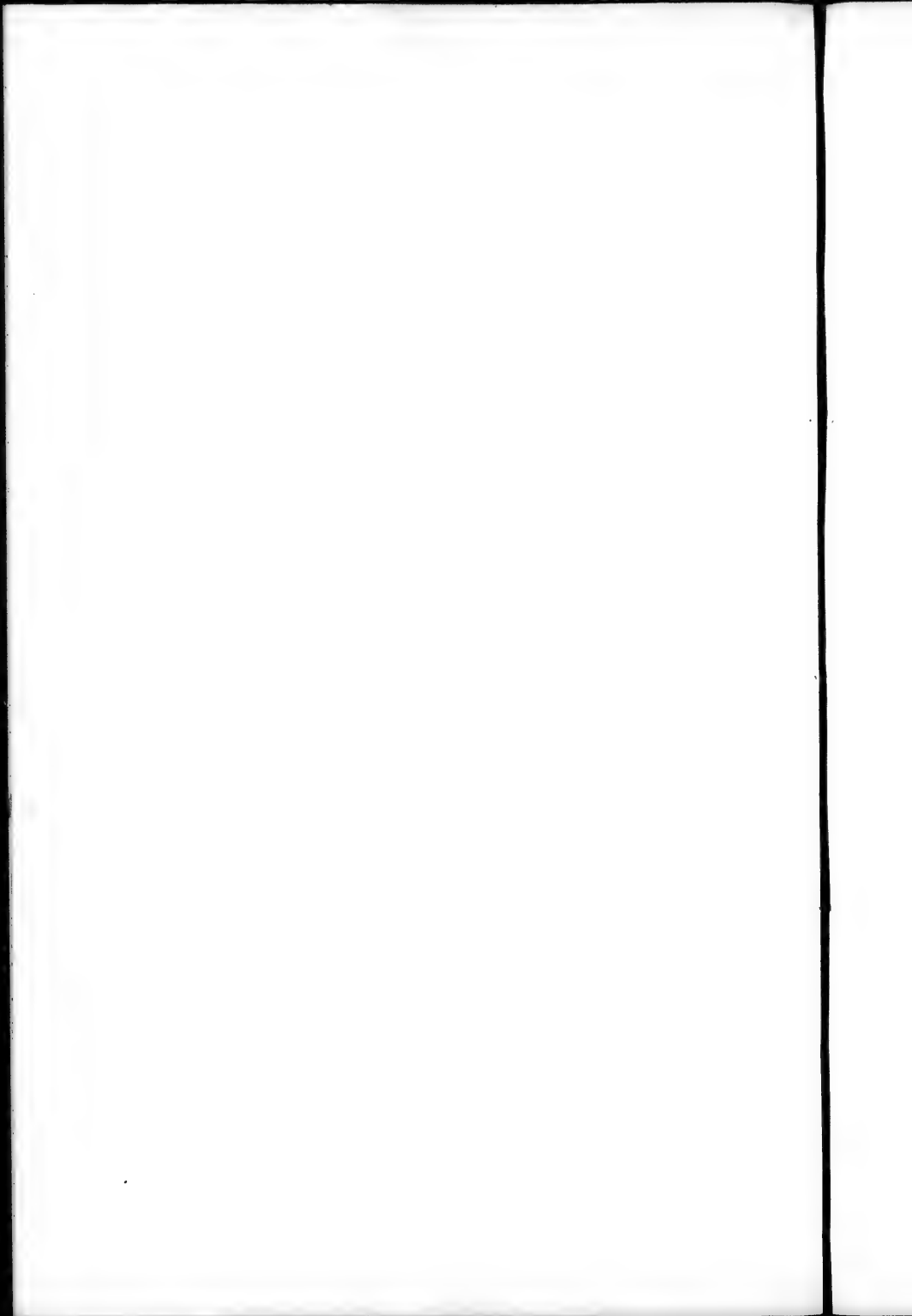
"Unfortunately, I do not possess a copy of my letter to Mr. Rayner, but the translation appears to me to be, on the whole, correct. Rayner asked me what was my opinion on the question from a geographical point of view, and my reply falls under two heads:—

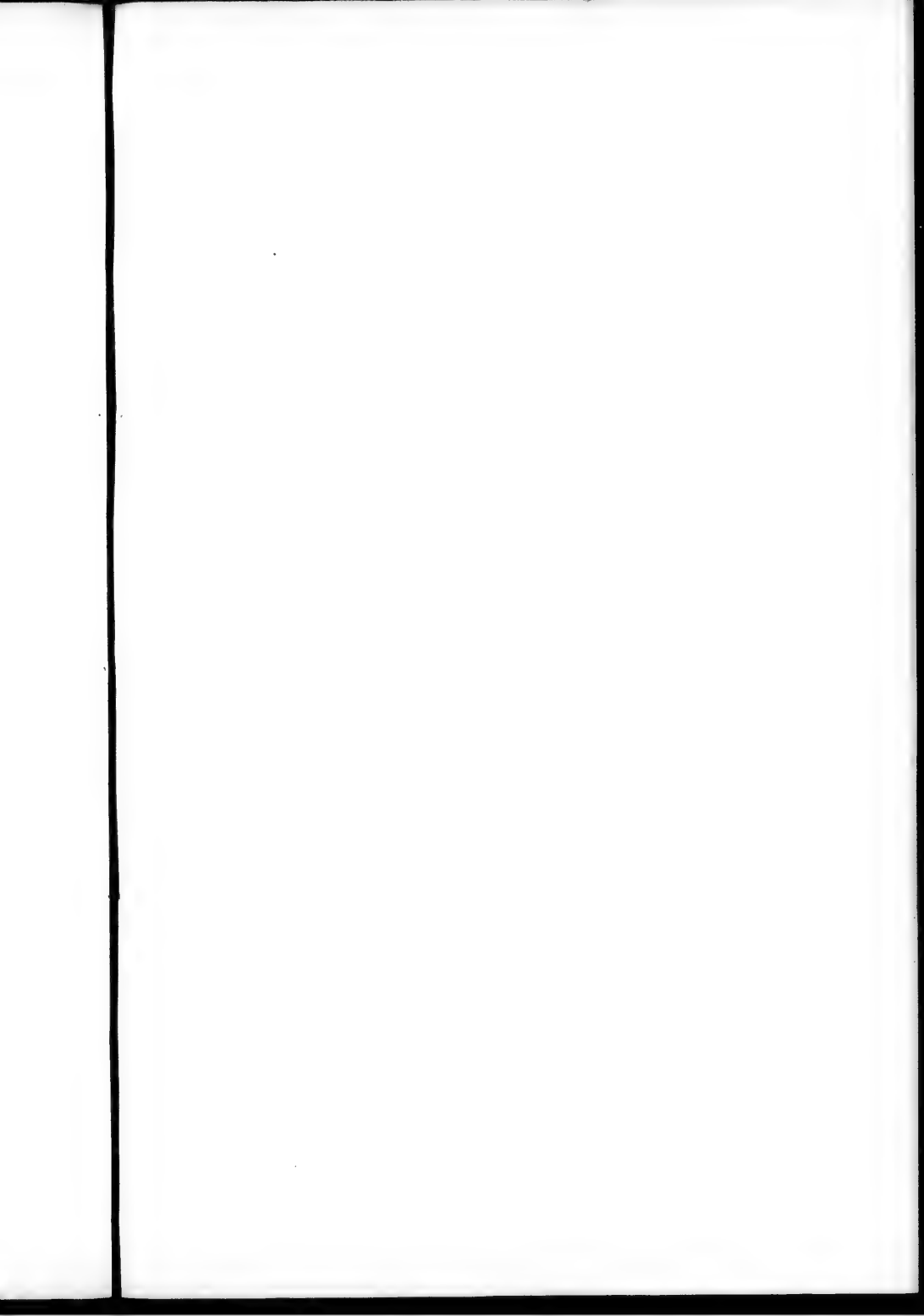
"1. The present geographers collectively, so far as I know, consider Behring Sea as part of the Pacific Ocean, and from whatever point of view the question is considered the conclusion always arrived at is that Behring Sea is an annex of the Pacific.

"2. This view, moreover, also generally prevailed as early as 1824, as the two earliest attempts at classification agree in it. What view was held by the Governments of the day is, however, questionable, as there are enough instances to show that Governments trouble themselves but little with science.

"With the highest consideration, I remain, &c.

(Signed) "ALEX. SUPAN."





An examination of all the Maps upon which the sea now called Behring Sea appears prominently, between about 1815 and 1825 (both inclusive), which could be found in the Map Department of the British Museum Library, has been made; also of some which appear in books of travel, &c., in the Printed Book Department.

Notes on various Maps examined in connection with the question of usage of the names "Pacific Ocean," "Behring Sea," &c.

Touching years previous to 1815, and subsequent to 1825, a selection only of the more important Maps has been consulted. Such selection was made by reference to the Catalogue titles of the Maps, and the results of the examination of each such Map are here noted, irrespective of the bearing which these may be supposed to have on the main question. The list as a whole therefore differs from that given as an Appendix to Mr. Blaine's despatch of the 17th December, 1890 (which was compiled for the purpose of making out a specified contention), and, so far as it goes, may be accepted as a general indication of the best usage in vogue at and about the time of the Convention of 1824 and 1825. The names printed in *italics* are in each case exact transcripts of those appearing on the Map.

To facilitate further reference, the Catalogue numbers of all the Maps obtained in the Map Department are given. Those contained in books may be referred to by the titles of the books.

No Maps of a date earlier than that of the publication of Cook's third voyage, in 1784, have been included in the list; but all Maps relating to Cook's voyage, and which include the area of Behring Sea, have been sought for, as Mr. Blaine, in his despatch above cited, appears to place special importance on one of them. This particular Map, published by William Faden, has not been found; but none of the original or official Maps relating to Cook's expedition agree with Mr. Blaine's description of this Map in naming Behring Sea (as Sea of Kamtchatka or otherwise) as separate from the North Pacific. On the contrary, in none of these Maps, whether in the English editions or in the French or German editions, of Cook's voyages, give any distinctive name to Behring Sea as a whole. The only Map relating to Cook's expedition upon which such separate name has so far been found is one taken from "Guthrie's Atlas" (No. 973 (5)), in which Behring Sea is named *Sea of Kamtchatka*. This is without date, but the "assigned date" in

the Catalogue of the British Museum Library is 1811.

" 'A General Chart, exhibiting the Discoveries made by Captain James Cook, &c. By Lieutenant Henry Roberts, of His Majesty's Royal Navy.' In Cook's 'Third Voyage,' 4to. edition. London, 1784. Folio volume of Maps and Plates accompanying text.

" This is the original of the Chart in the 8vo. edition. Behring Sea appears without names, though *Olutarskoi Sea*, *Beaver Sea*, *Gulf of Anadir*, *Shoal Water*, *Bristol Bay*, appear as local names of equal rank. The three first close in to the Asiatic coast.

" *Behring's Strait*. *North Pacific Ocean*.

" 'Chart of the N. W. Coast of America and the N. E. Coast of Asia.' In same original 4to. edition.

" Behring Sea without name, though occupying a central position, and shown in detail.

" *Bristol Bay* is the most prominent name on the whole of this part of the Chart.

" *Anadirsk Guba* appears in small letters in the gulf itself. Other names appearing in the General Map are here wanting.

" *Bherings Strait*. No name included on part of North Pacific included.

S. 1, Box 12.

" 'A General Chart, exhibiting Discoveries made by Cook,' by Lieutenant Roberts, 1784.

" Behring Sea without general names. *Beaver Sea* and *Olutarskoi Sea*, engraved close in to shore of Kamtschatka, *Gulf of Anadir* and *Bristol Bay* prominently named.

" *Behring's Straits*. *North Pacific Ocean*.

" 'A General Chart, exhibiting the Discoveries made by Captain James Cook,' &c. In 'A Voyage to the Pacific Ocean, &c.; Cook.' 27 vols. 8vo. London, 1784.

" The Chart included in the British Museum copy of this work appears to have been inserted, and bears date on margin as engraved for 8vo. edition in 1786. Roberts' name is not here given as authority.

" Behring Sea without name.

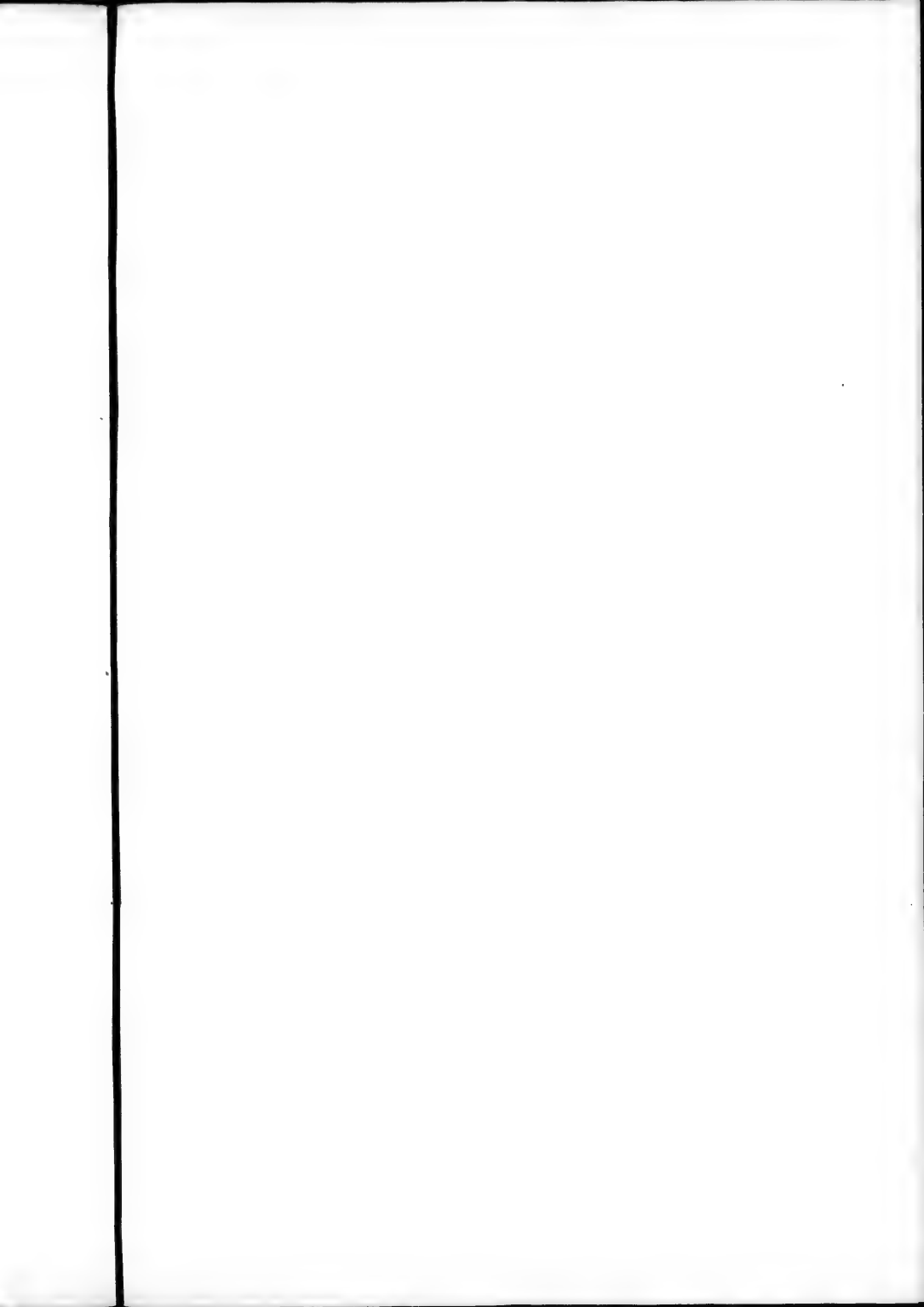
" *Behring's Str.* *North Pacific Ocean*.

" (On this edition of Map, *Olutarskoi Sea*, *Gulf of Anadir*, *Shoal Water*, *Bristol Bay*, appear as local names of equal rank, but 'Beaver Sea,' shown on some other Maps of Cook's Voyages, is omitted).

" 'A General Chart, exhibiting the Discoveries made by Captain James Cook,' &c. In Cook's 'Third Voyage,' 2nd edition. London, 1785. 4to.

" This seems to be identical with that in the 1st edition. Behring Sea appears without name. Subsidiary names in Behring Sea, &c., same as in 1st edition.

" 'Chart of the N. W. Coast of America and N. E. Coast of Asia.' In 'Cook's Voyage,' 2nd edition. Identical with corresponding Map in 1st edition.



"'Carte Générale offrant les Découvertes, &c., par A. Roberts,' &c. In 'Troisième Voyage de Cook.' Paris, 1785. 4to.

"Behring Sea appears, but without name, though various parts named as follows: *M. Bouver*, *M. Olutarski*, *Golfe d'Anadir*, *Bas Fonds*, *Baye Bristol*. These are all engraved in characters of equivalent size and style.

"*Det. de Behrings. Ocean Pacifique du Nord.*

"'A General Chart exhibiting Discoveries made by S. 1, Box 12. Captain Cook,' &c. Same Map as last. Another edition. From the 'Political Magazine,' December 1784 and January 1785. Nomenclature same as above.

"'Carte de la Côte N. O. de l'Amérique, et de la Côte N. E. de l'Asie.' In 'Troisième Voyage de Cook.' Paris, 1875. 4to.

"Behring Sea occupies a central position, but without name.

"'*Détroit de Behring.*' No name on that part of Pacific to south of Aleutian Islands, which is included.

"General Charts, &c., in Cook's 'Dritte Reise.' 2 vols. 4to. Berlin, 1788.

"Behring Sea without name.

"*Beaver See, Olutarskische See, Meerbusen von Anadir*, appear as subsidiary names close to Asiatic coast.

"*Seicht Wasser, Bristol Bay*, similarly on American coast.

"*Behrings Strasse. Das Nordliche Stille Welt Meer.*

"'Charte von de Nord-Westlichen Küste von America und der Nord-Östlichen Küste von Asien,' in Cook's 'Dritte Reise.'

"Behring Sea all included, but without name.

"*Behrings Strasse. Meer von Ochotsk*, partly shown and prominently named.

"No name on part of Pacific included south of Aleutian Islands.

"'Chart of the Pacific Ocean north of the Line.' Laurie 7195, 3 (1). and Whittle. London, 1799.

"Behring Sea named *Sea of Kamtschatka*.

"North Pacific Ocean appears.

"'Hydrographie Française. Mappemonde ou Carte Réduite des Parties Connues du Globe, pour servir au Voyage de La Pérouse, 1785-88.' No date. Probably S. 13 (10), 1. about 1798 or before, as Vancouver's surveys not included. From 'Atlas du Voyage.' La Pérouse. No. 1.

"Behring Sea not named, though *Mer d'Ochotsk*, &c., named.

"Behring Strait named *Det. de Behring*.

"Pacific Ocean named *Grand Ocean*.

"'Hydrographie Française. Carte des Côtes de l'Amérique et de l'Asie.' (From discoveries by French frigates 'Boussole' and 'Astrolabe.' No date. Probably about 1798 or before, as Vancouver's surveys not included. From 'Atlas du Voyage.' La Pérouse. No. 15.) S. 13 (11), 3. S. 13 (10), 3.

"Behring Sea not named on this large-scale Chart.

"Behring Strait named *Det. de Behring*.

"North Pacific named *Grand Ocean Septentrional*.

"Map showing 'The Russian Empire' in view of the Russian Empire. Took. London, 1800. 3 vols. 8vo.

"Whole of Behring Sea included, but without separate name; on the contrary, the North Pacific is named as a whole *Eastern Ocean*, the first word lying to the north, the second to the south of the Aleutian Islands. (*Eastern Ocean* is used in the same general sense in the text.)

"*Sea of Okhotsk* distinctly named.

"*Behring's Straits*.

"Map published by the Quartermaster-General's Department. Russia. 1802.

"This is really a Chart showing the Asiatic and American coasts and the whole of Behring Sea.

"The copy in Foreign Office is the identical one sent by Sir C. Bagot, 17th November, 1821, in his despatch of that date, and with his MS. notes upon it.

"Behring Sea is named, in large letters running from west to east, *Beaver Sea*.

"*Kamtschatka Sea*, in smaller letters, runs parallel to coast of peninsula of same name, and inside the Commander Islands.

"North Pacific is named *Southern Ocean* or *Still Sea*.

"Behring Strait is so named.

"Chart of the Strait between Asia and America with the Coast of the Tschutski. Drawn by A. Arrowsmith.

"This Map appears in an account of a geographical and astronomical expedition to the northern part of Russia (expedition of Billings for the Russian Government), by Sauer. London, 1802.

"This is practically a Chart of Behring Sea, but that sea is not separately named in any way.

"*Sea of Ochotsk* appears prominently. *Sea of Anadyr* in bay of that name.

69810 (15).

"General Map of North and South America. A. Arrowsmith. London, 1804.

"All eastern part of Behring Sea included as far west as Behring Island, but without name.

"*North Pacific Ocean*.

69815 (15).

"Map of America. A. Arrowsmith. 1804.

"Behring Sea without name.

"*Behring's Strait*. *North Pacific Ocean*.

S. 32 (6).

"A General and Classical Atlas. By E. Pattison. 1804.

"Map 3. The World.

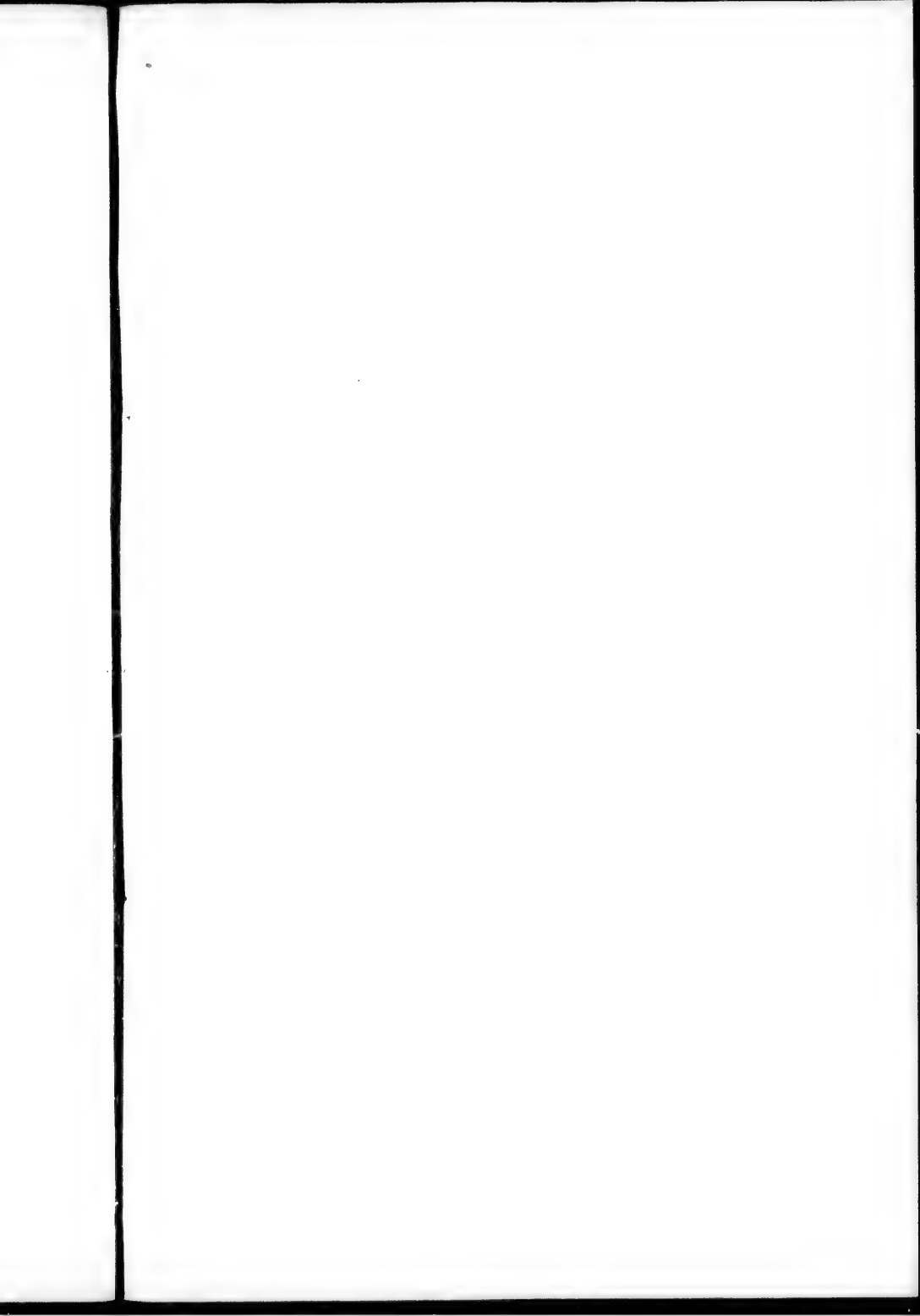
"Rather small Map in hemispheres. No names on Behring Sea, Okotsk Sea, Japan Sea, &c., though *Hudson's Bay*, *Baffin's Bay*, *China Sea*, &c., shown.

"*North Pacific Ocean* appears alone.

"Map 5. Asia.

"Western part of Behring Sea shown, but without name, though *Sea of Okotsk*, &c., named.

"*Pacific Ocean*.



"Map 7. North America.

"Eastern part of Behring Sea shown, but without name.

"North Pacific Ocean.

"'Voyages along the North-east Coast of Siberia, and Arctic, and Pacific Oceans during Eight Years,' &c. (Billings' Expedition.) By Captain Sarychef. St. Petersburg, 1802. [Title in Russian.]

"Behring Sea without any general name.

"Sea of Kamtschatka &c., appear precisely as in the next Map, which is a German edition of the same.

"'Charte des Nordöstlichen Theils von Sibirien, des Eismers, des Ostoceans und der Nordwestlichen Küste von America.' Entworfen von Sarütschew.

"From Sarychef's account of Billings' voyages. German translation. Leipzig, 1805.

"Behring Sea without any general name.

"Das Meer von Kamtschatka appears in the western part of the sea, to north of Commander and the western Aleutian Islands, but is distinctly intended to apply only there. Lettering used in this case same with that of Das Ochotskische Meer.

"Berings Strasse. Ost-Ocean oder das Stille Meer.

"'Reduced Chart of Pacific Ocean by Arrowsmith.' 980 (11). Additions to 1809. One sheet.

"This is a reduction of 980 (12), but evidently from an earlier edition than that elsewhere quoted, extending equally far north, and likewise showing Behring Sea without name.

"'Smith's New General Atlas.' London, 1809.

S. 55 (7).

"Map 1. Western Hemisphere. Behring Sea named Sea of Kamtschatka.

"Bering's Str. North Pacific Ocean.

"Map 3. The World. Mercator's Projection.

"Same as last.

"Map 28. Russian Empire.

"Behring Sea named Sea of Kamtschatka.

"Map 31. Asia. Greater part of Behring Sea shown, and portion of America, but without name on sea.

"Bering Str. North Pacific Ocean. Part of the latter name runs over into Behring Sea.

"Map 41. America.

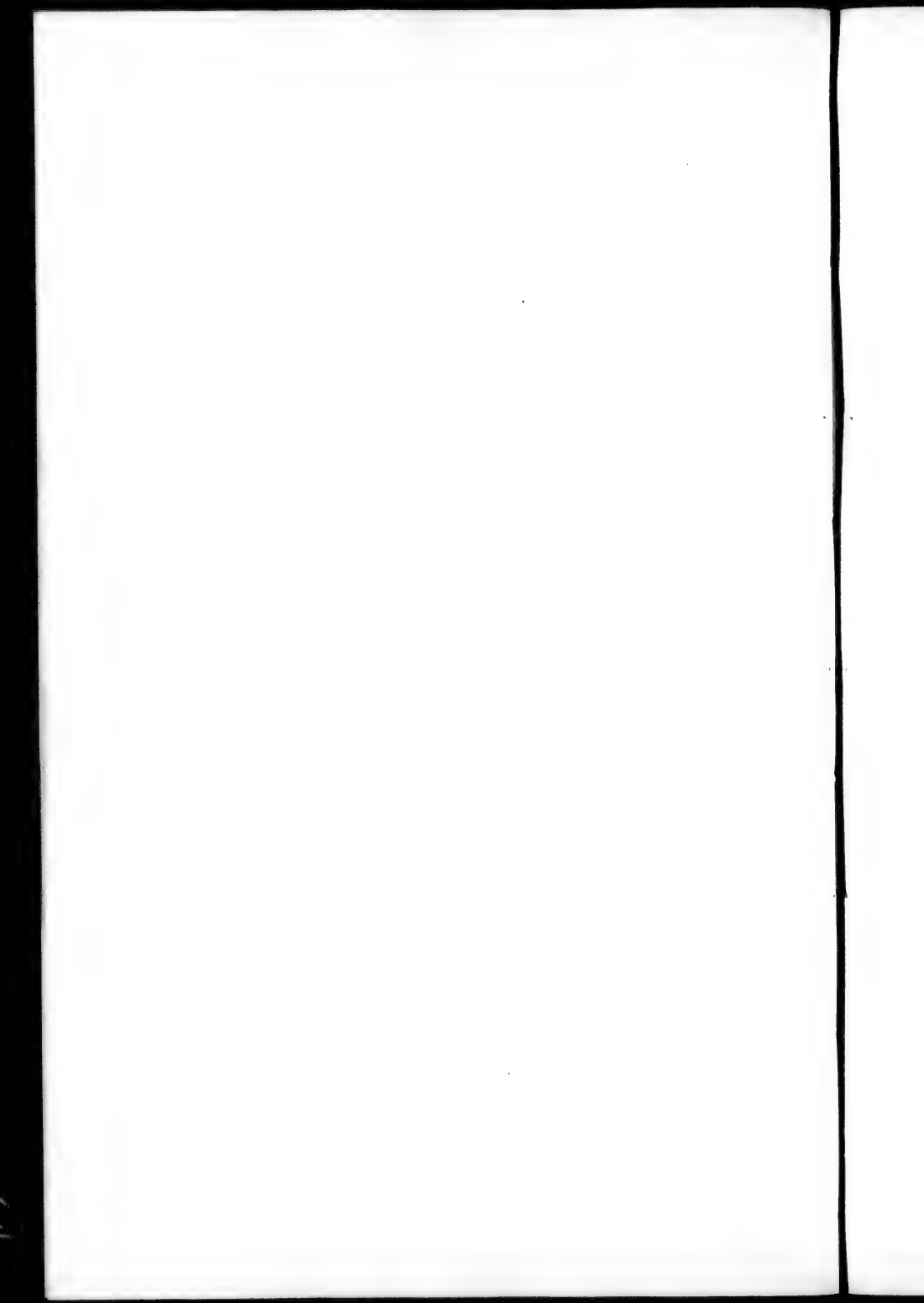
"Behring Sea named Sea of Kamtschatka.

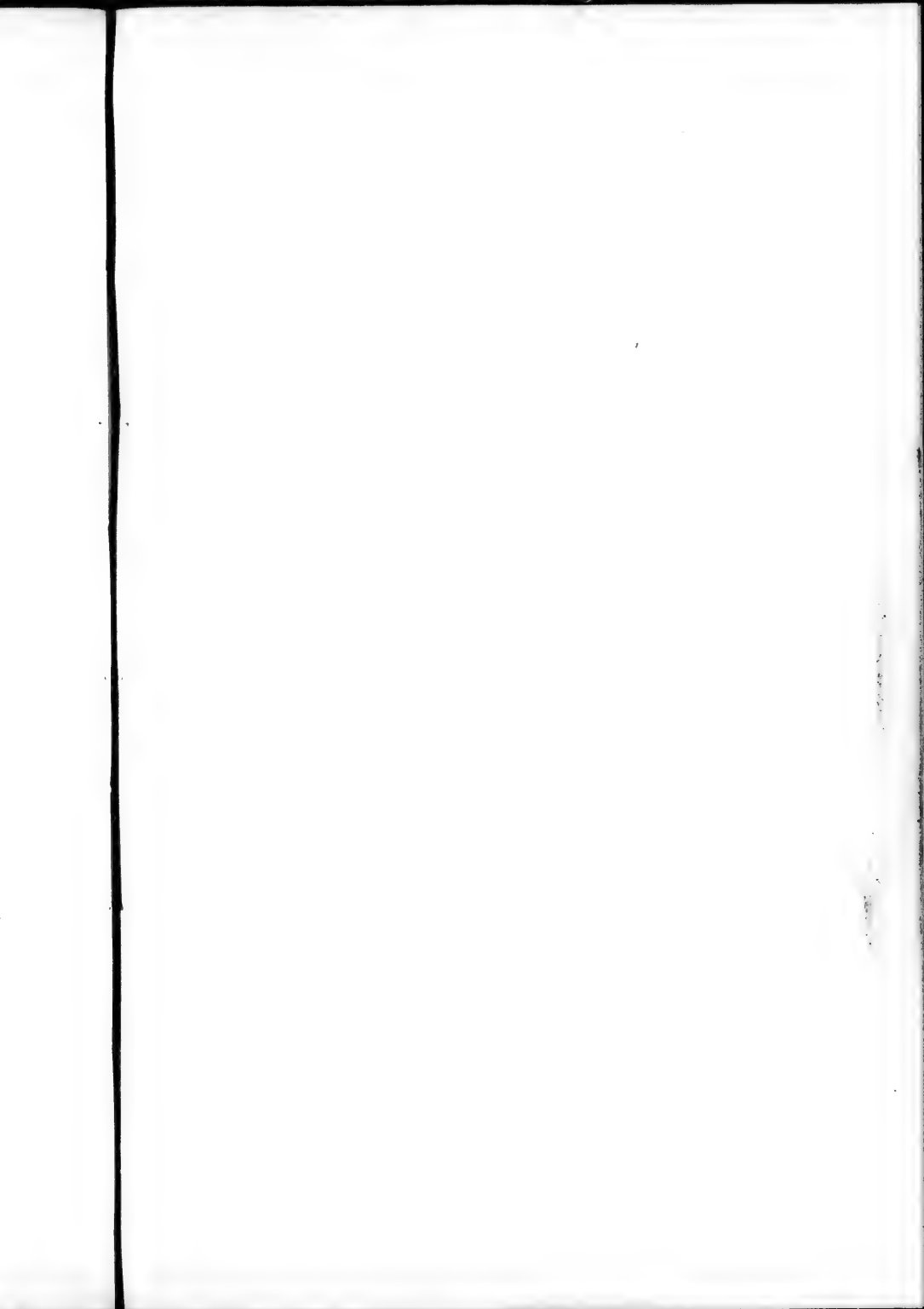
"Map 42. North America. Greater part of Behring Sea included in detail, but without name.

"Bhering's St. North Pacific Ocean.

"'Arrowsmith's Chart of the Pacific Ocean.' This is a 980 (13). large and important Map in nine sheets, specially devoted to the Pacific Ocean. Originally published 1798. This edition with corrections to 1810. The northern edge of the Map runs about latitude 62° north, and it includes the greater part of Behring Sea, but shows it as a large blank unnamed space. Bristol Bay alone is rather prominently named. By contrast, the Sea of Ochotsk, Sea of Japan, and other inclosed seas are named.

- K. 116, 66, 2. " 'Karte de Grossen Ocean.' Soltzmann. Perthes. 1810.
 " Behring Sea named *Kamschatkisches Meer*.
- S. 145 (83). " 'Ostell's New General Atlas.' London, 1810.
 " Map 1. The World. Behring Sea without name, though *Sea of Okhotsk*, &c., all clearly named.
 " *Behring's Strait*. North Pacific.
 " Map 19. Asia. Includes all the western part of Behring Sea, but without name.
 " *Pacific Ocean*.
 " Map 24. North America. Includes all eastern part of Behring Sea, but without name.
 " *Behring's Straits*. Pacific Ocean.
- 973 (5). " 'Chart of the World.' Mercator's Projection. Showing Captain Cook's discoveries. Date assigned in catalogues, 1811. (From Guthrie's 'Atlas'.)
 " Behring Sea named *Sea of Kamtschatka*.
 " *Behring's Straits*. North Pacific Ocean.
- S. T. W. (4). " 'Hydrographical Chart of the World.' A. Arrowsmith, 1811.
 " Behring Sea named *Sea of Kamtschatka*.
- S. 1 (2). " *Bering's Strait*. North Pacific Ocean.
 " 'New Atlas.' Fielding Lucas. Baltimore. Assigned date in catalogue, 1812.
 " Map 2. Western Hemisphere.
 " Behring Sea named *Kamtschatka Sea*.
 " *North Pacific Ocean*.
 " Map 3. The World. Mercator's Projection.
 " Behring Sea shown, but without name.
 " *Behring's Str.* North Pacific Ocean.
 " Map 29. North America.
 " Behring Sea named *Sea of Kamtschatka*.
 " *Behring's Str.* North Pacific Ocean.
- S. 76. " 'Goldsmith's Atlas.' London, 1813.
 " Map 1. The World. Stereographic Projection.
 " Behring Sea not named, though *Sea of Okhotsk*, *Sea of Japan*, &c., named.
 " *North Pacific Ocean*.
 " Map 2. World on Mercator's Projection.
 " Names same as above.
 " Map 4. Asia. Same as above.
- S. 144 (9). " 'New Elementary Atlas.' Cary. London, 1813.
 " Map 1. The World. *Sea of Kamtschatka* placed in western part of Behring Sea adjacent to the peninsula of same name. No general name for Behring Sea.
 " *North Pacific Ocean*.
 " Map 2. The World. Same as above.
 " Map 19. Asia.
 " *Sea of Kamtschatka*, the name being placed quite close to the land of the peninsula.
 " Map 25. North America. Whole eastern part of Behring Sea shown, but without name.
- 69810 (54). " 'New Map of America.' Smith. London, 1814.
 " Behring Sea called *Sea of Kamtschatka*.





"Map of the World.' Illustrating the voyages and travels of G. H. von Langsdorff. In Langsdorff, 'Voyages and Travels, 1803-7.' London, 1814. 4to. 2 vols.

"This Map is separately marked on margin as engraved in 1814.

"Behring Sea without name, though the author's route 69810 (54). passes twice across it.

"*Berings Strait. North Pacific Ocean.*

"*'Pinkerton's Atlas.'* London, 1815.

Library number:
S. 67, 4.

"No. 1. The World, Western Hemisphere. Behring Sea named *Sea of Kamtschatka*.

"No. 3. Northern Hemisphere (Polar Projection). Behring Sea named *Sea of Kamtschatka*. This name, and those of *Sea of Okhotsk*, *Sea of Jesso*, *Yellow Sea*, &c., all in one size and style of lettering, and apparently similarly subordinate to *Grand Northern Ocean*, which is written across the Pacific.

"No. 40. About half of the eastern part of Behring Sea is shown on this Map, but without any name, though there is plenty of room for its introduction. *Grand Northern Ocean* written across Pacific.

"Nos. 60 & 61. The World, on Mercator's Projection. Behring Sea named *Sea of Kamtschatka*. In one Map is in same size and style of lettering as *Sea of Okhotsk*, in the other in same form as *Davis's Strait*. Part of the name *Grand Northern Ocean* extends to the west of the Kurile Islands chain.

"*'Carte Encyprotype de l'Amérique.'* H. Buré. 1815. 69915 (36).

"Behring Sea named *Bassin du Nord*.

"Behring Strait named *Det. de Behring*.

"Pacific named *Grand Ocean*.

"*'Charte von der Behrings Strasse.'* August, 1816.

"In Kotzebue, 'Entdeckungs-Reise in die Sud-See,' &c. Weimar, 1821. This Chart is the original of that in the English translation. Large part of Behring Sea shown, but without name.

"*Behrings-Strasse.*

"*'Compendenser Allgemeiner Atlas.'* Geog. Inst., Weimar, S. 48 (9). 1816.

"Map 2. Western Hemisphere. Behring Sea without name.

"Behring Strait named *Cook's Stra.*

"North Pacific named *Das Nördliche Stille Weltmeer*.

"Map 26. Asia. Behring Sea named here *Kamtschatkaschte Meer*.

"*Cook, od. Behring's Strasse.*

9.

"Map 29. America. Part of Behring Sea shown, but without names.

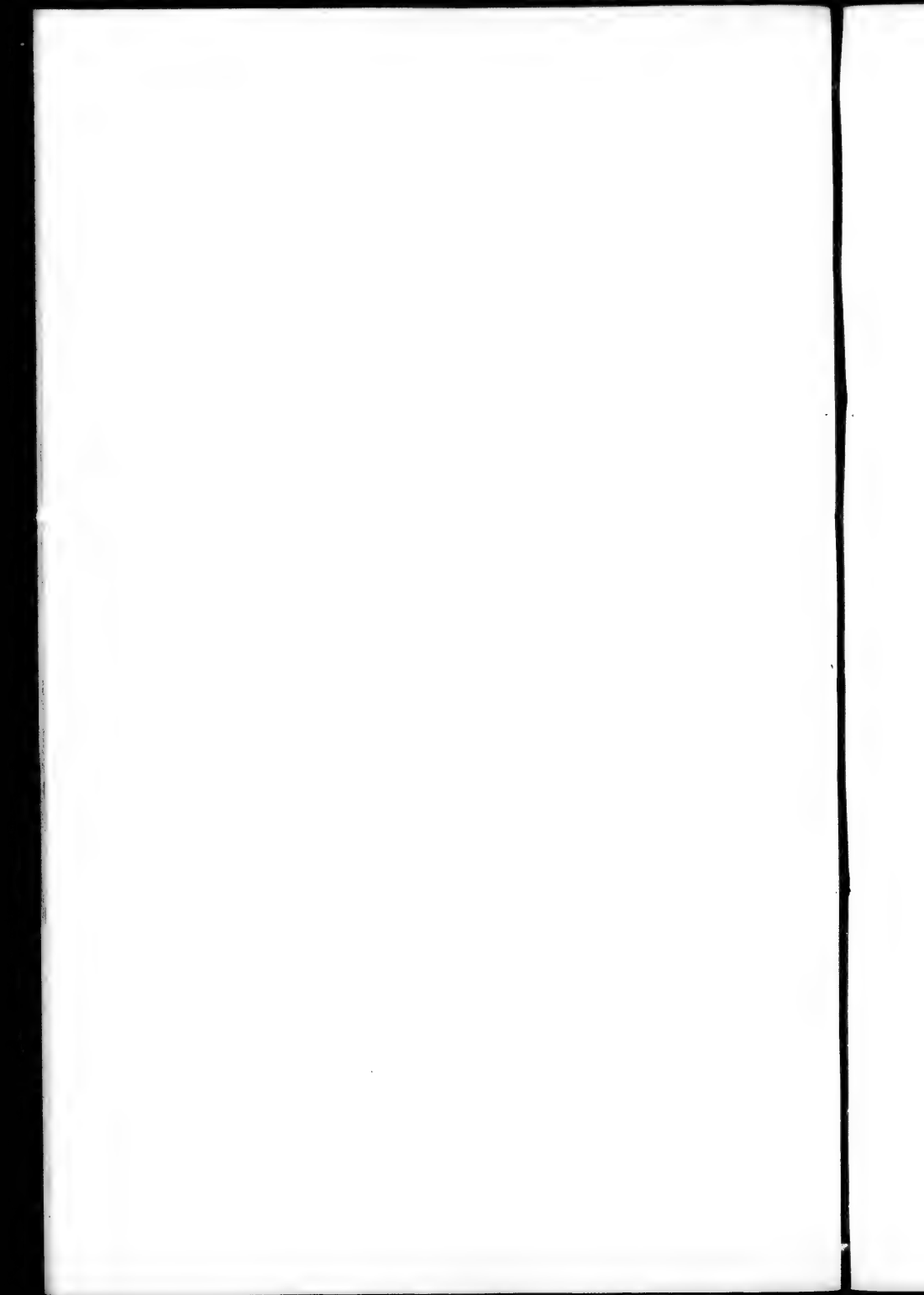
"*'Thompson's New General Atlas.'* Edinburgh, 1817. S. 110, 5. Folio.

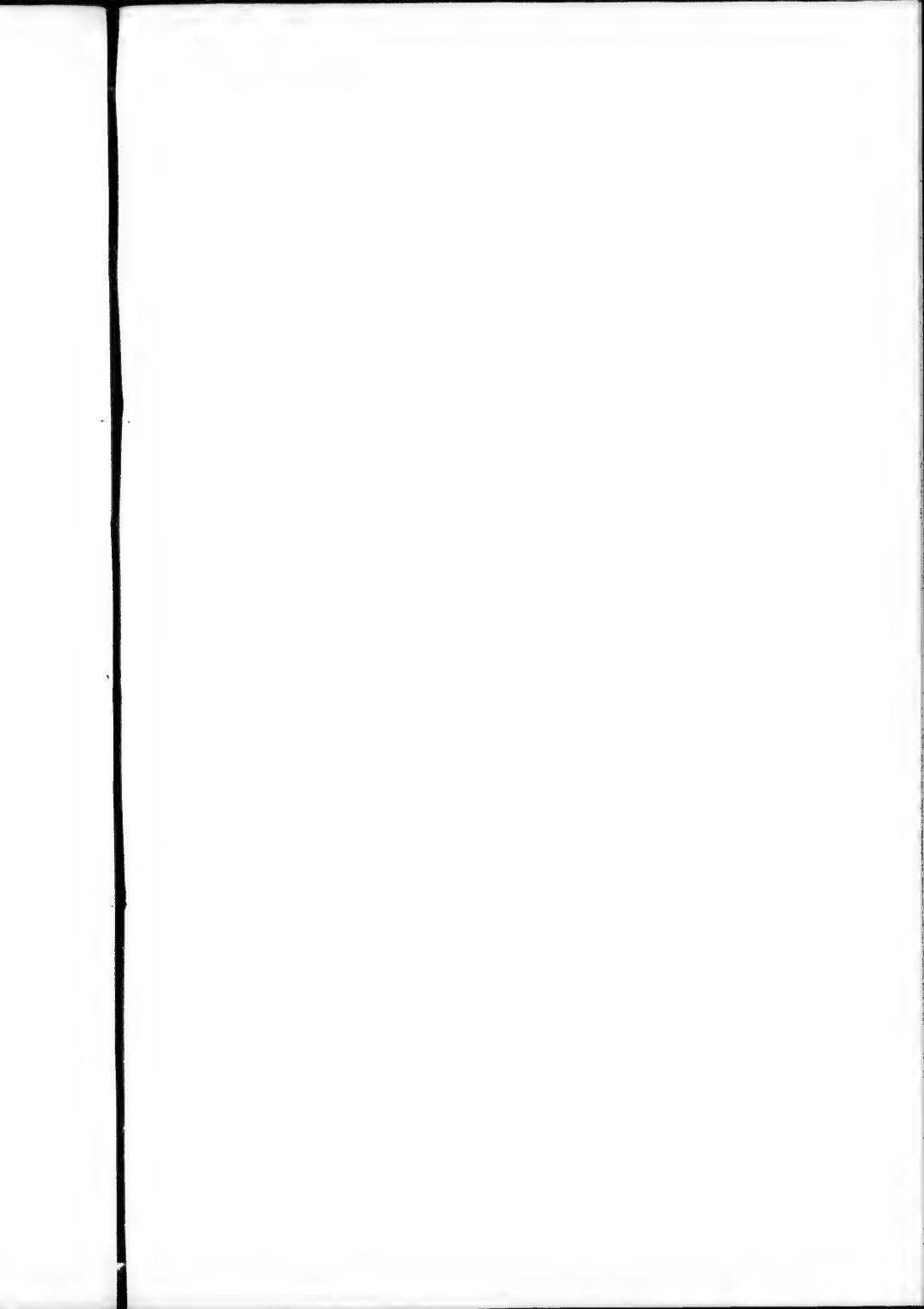
"Map 1. Hydrographical Chart of the World, Mercator's Projection.

"*Sea of Kamtschatka* engraved parallel to the peninsula, and near it. No general names for Behring Sea.

"*Behring Str. North Pacific Ocean.*

- "Map 2. Northern Hemisphere, Polar Projection.
 "Behring Sea named *Sea of Kamtschatka*.
 "N. Pacific named *Grand Northern Ocean*.
 "Map 5. Western Hemisphere.
 "Sea of *Kamtschatka*, but evidently applied to western part only of Behring Sea.
 "S. of *Anadir* also appears, though in smaller letters, in north-western part of Behring Sea.
 "Map 6. Northern Hemisphere, projected on plane of horizon of London.
 "Behring Sea named *Sea of Kamtschatka*, *Bhering Str.*
 "Map 35. Asia. Whole of Behring Sea shown.
 "Sea of *Kamtschatka* engraved between *Bhering's I.* and the peninsula, and evidently confined to western part of Behring Sea. Manifestly equivalent in rank to S. of *Anadir*, which is engraved in gulf of that name further north.
 "North Pacific Ocean.
 "Map 36. Russian Empire. Sea of *Kamtschatka* on western part of Behring Sea, which alone included.
 "Bhering's Strait. Pacific Ocean.
 "Map 52. America. Greater part of Behring Sea shown, but without name.
 "Bhering's St. North Pacific Ocean.
 "Map 53. North America. About half of Behring Sea shown, but without name.
 "Bhering's Straits. North Pacific Ocean.
 "Map 74. Chart of northern passage between Asia and America.
 "Behring Sea named *Sea of Kamtschatka* as a whole.
 "Bhering's Strait. Northern Part of Pacific Ocean.
 69810 (55). "Charle von America.' F. W. Streit. Nürnberg, 1817.
 "Behring Sea named *Meer von Kamtschatka*.
 "Pacific Ocean named *Der Stille Ocean*.
 46820 (51). "Russian War Topographical Depôt Map.' General Map of Asia. St. Petersburg, 1817.
 "Behring Sea so named, in same style of lettering as Okhotsk Sea, &c.
 "Pacific Ocean so named.
 69810 (55). "Charte von America.' Streit. F. Campe, Nürnberg, 1817.
 "Behring Sea named *Meer von Kamtschatka*.
 "Behring Strait named *Behring oder Cooks Strasse*.
 "Pacific named *Der Still Ocean*.
 982 (30). "Map of Countries round the North Pole.' A. Arrowsmith. London, 1818.
 "Behring Sea named *Sea of Kamtschatka*.
 "North Pacific Ocean.
 982 (36). "Map of North Polar Regions.' H. M. Leake. 1818.
 "Behring Sea named *Sea of Kamtschatka*.
 "North Pacific Ocean.
 982 (33). "Map of Countries round the Arctic Ocean.' J. Wyld. London, 1818.
 "Behring Sea named *Sea of Kamtschatka*.





"Map of Countries round Arctic Ocean.' C. Smith. 983(39).
London, 1818.

"Behring Sea named *Sea of Kamchatka*.

"Asia.' By Arrowsmith. London, 1818.

"Behring Sea not named, though a large part of the 2 Tet. (end.)
western side included.

"Chart of the North Coast of Asia, and of the Sea to
the north of Bering's Strait.' In Burney's 'Chronological
History of North-Eastern Voyages of Discovery.' London,
1819.

"Greater part of Behring Sea included, but without
name, though the northern part of the *Sea of Ochotsk*,
which alone included, is prominently named.

"Bradley's *Universal Atlas*.' London, 1819.

S. 29 (23).

"Map 1. The Globe.

"Behring Sea without name.

"*Behring's Str. Pacific Ocean*.

"Map 3. Asia. Shows the whole of Behring Sea, but
without name, in manifest contrast to *Sea of Ochotsk*, &c.

"*Bhering's Str. Pacific Ocean*.

"Map 5. North America. Includes greater part of
Behring Sea, but without name.

"*Bhering's Strait*.

"Carte de l'Asie.' Brué. Paris, 1820.

46870 (49).

"Behring Sea named *Mer de Behring*.

"Behring Strait named *Del. de Behring*.

"Pacific named *Grand Ocean*.

"Rossi *Atlas*.' Milan, 1820.

1296, i, 4.

"Map 6. World in Hemispheres.

"Behring Sea named *Bacine del Nord*.

"Behring Strait named *Str. di Bering*.

"North Pacific named *Grande Oceano Boreale*.

"Map 7. The World. Mercator's Projection.

"Behring Sea appears without name.

"Behring Strait named *Stretto di Bhering*.

"Pacific named *Mare Pacifico*.

"Map 25. Asia.

"Behring Sea appears without distinctive name,
G. d'Anadir and *Baya di Bristol* occupying most of
available area for name.

"Map 31. Grande Oceano.

"Behring Sea appears without name. *Mare d'Ochotsk*,
&c., named, and *Baia di Bristol* in letters of same size
and style with these.

"Map 34. L'America Settentrionale.

"Shows the whole of Behring Sea, but without name.

"Behring Strait named *Stretto di Bhering*.

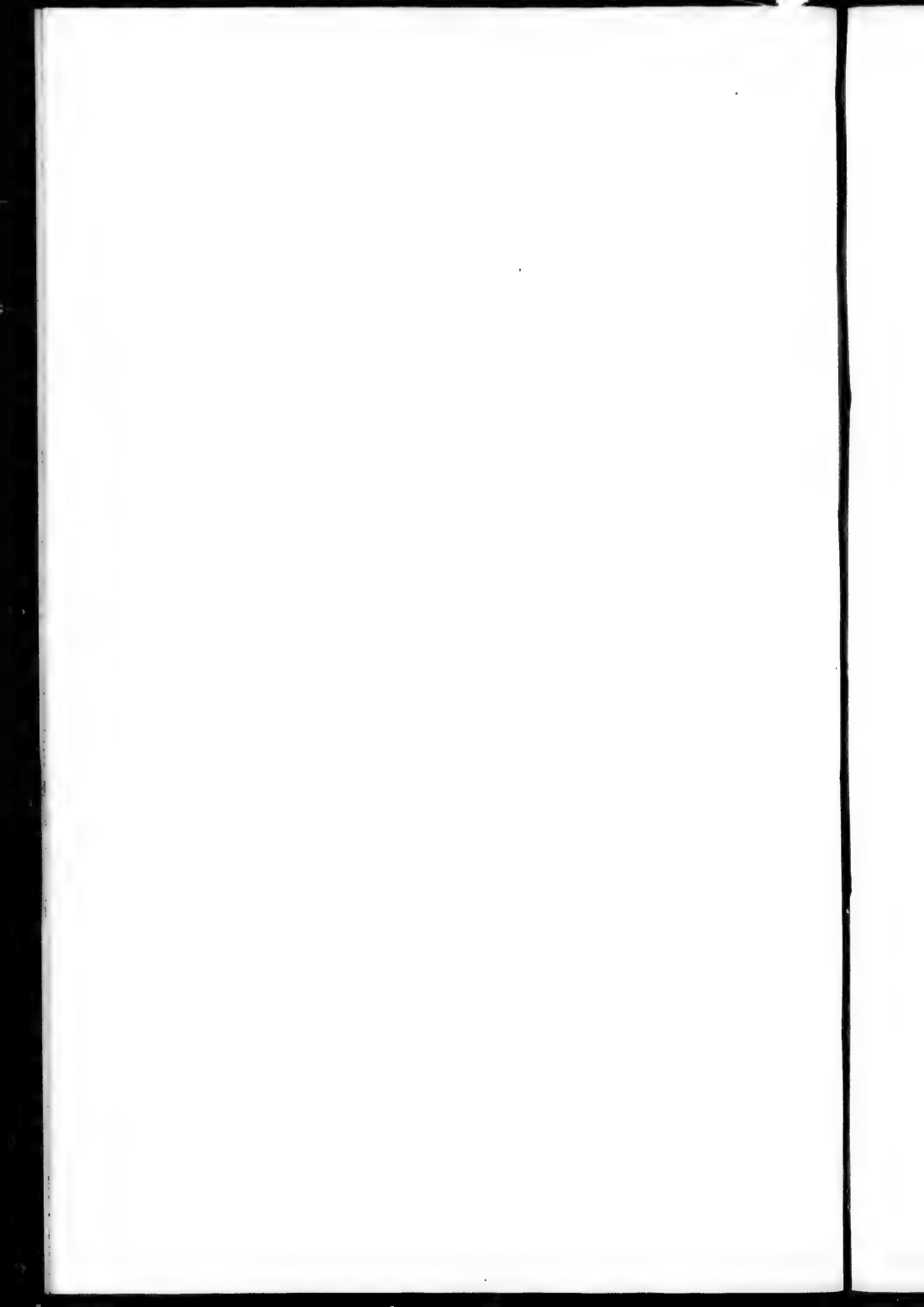
"North Pacific named *Oceano Boreale*.

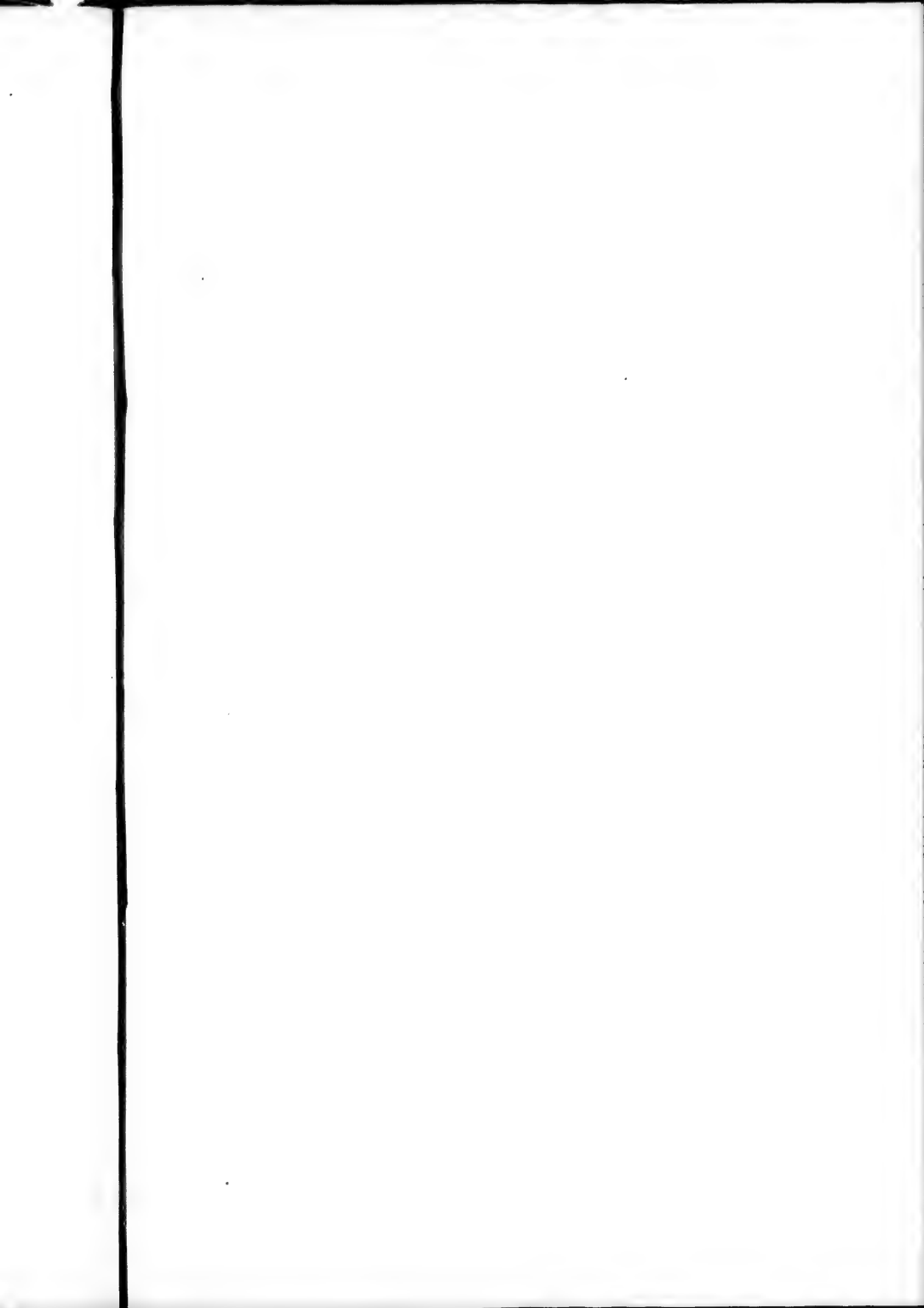
"(Notable that on this rather large Map Behring Sea has
no name, though *Sea of Okotsk*, though only partially
included, is named in prominent characters.)

"This Map bears below border, "Incisero l'anno 1821."

"Chart of Beerings Straits on Mercator's Projection,
August 1816.' In Kotzebue, 'Voyage of Discovery into
the South Sea,' &c. English Translation. London, 1821.

- "This Chart bears on margin date of production, 1821.
 "Large part of Behring Sea shown, but without distinctive name
- F. O., No. 16. " 'Map of America.' By A. Arrowsmith, Hydrographer to His Majesty. London, 1822. (Additions to 1823.)
 "Greater part of Behring Sea included, but without name.
 " *Beerling's Strait. North Pacific.*
- S. 100 (15). " 'American Atlas.' Carey and Son. Philadelphia, 1823.
 "Map 3. Eastern part of Behring Sea shown, but without name.
 " *Str. of Bhering. Pacific Ocean.*
- 69810 (16). " 'America.' R. Wilkinson. London, 1824.
 "Behring Sea named *Sea of Kamtschatka.*
- S. 145 (4). " 'Weltkarte in Mercator's Projection.' Von Christian Gottlieb Reichard. Nuremberg, 1825.
 "Behring Sea named *Meer von Kamtschatka.*
 " *Behrings Strasse. Nordlicher Grosser Ocean.*
- S. 132 (37). " 'Butler's Atlas.' London, 1825.
 "Map 1. The World, in Hemispheres.
 "Behring Sea shown without name, though *Sea of Ochotsk*, &c., named.
 " *Ehering's Strait. North Pacific Ocean.*
 "Map 16. Asia.
 "Behring Sea named *Sea of Kamtschatka.*
- S. 49 (8). " 'A New General Atlas.' A. Finley. Philadelphia, 1825.
 "Map 1. Western Hemisphere.
 "Behring Sea named *Sea of Kamtschatka.*
 " *Bhering's Straits. North Pacific Ocean.*
 "Map 3. The World. Mercator's Projection.
 "Behring Sea shown without name.
 " *Bhering's Straits. North Pacific Ocean.*
 " (*Sea of Ochotsk, Eaffin's Bay, &c.*, all named.)
 "Map 4. North America. Behring Sea included in part, but without name.
 "Map 51. Asia. Greater part of Behring Sea included, but without name.
- S. 156 (21). " 'Smith's General Atlas.' London, 1826.
 "Map 1. The World, in Hemispheres.
 "Behring Sea named *Sea of Kamtschatka.*
 " *Bhering's St. North Pacific Ocean.*
 "Map 31. Asia. The greater part of Behring Sea shown, but without name.
 " *Sea of Anadir*, in north-west part of Behring Sea, very prominently named.
 " *Bering's Str. North Pacific Ocean.*
 " (The latter name, as in previous edition of this Map, extending over part of Behring Sea.)
 "Map 33. Russian Empire.
 "Behring Sea named *Sea of Kamtschatka.*
 "Map 47. Behring Sea named *Sea of Kamtschatka.*





"Map 48. North America. Western part of Behring Sea shown, but without name.

"*Bhering's Str. North Pacific Ocean.*

"'Nordamerika und Westindien.' Versen. Assigned 69915 (37). date in Catalogue, 1827.

"Behring Sea named *Meer von Kamschatka.*

"Behring Strait named *Cook's Strait.*

"'Carte Générale de l'Océan Pacifique.' By Krusenstern. 14001, K. 2. St. Petersburg, 1827.

"Behring Sea named *Mer de Behring.*

"'Chart of the World,' upon Mercator's Projection. 973 (6). Cary. London, 1827.

"Behring Sea without name, though *Sea of Okhotsk*, &c., prominently named.

"*Behring Strait. North Pacific Ocean.*

"'The Eaton Comparative Atlas.' By A. Arrowsmith. S. 12 (2). London, 1828.

"Map 3. Asia.

"Western part of Behring Sea shown, but without names.

"*Bhering's Strait, Sea of Okotsk*, &c., named.

"*North Pacific Ocean.*

"Map 27. Western Hemisphere.

"Whole of Behring Sea shown, but without name.

"*Beerig's Str.* named.

"*North Pacific Ocean.*

"'A New General Atlas.' John Grigg. Philadelphia, S. 49 (9). 1828.

"Map 1. Western Hemisphere.

"Behring Sea without name.

"*Bhering Str. North Pacific Ocean.*

"Map 14. Asia.

"Behring Sea without name.

"'Asia.' A. R. Fremin. Paris, 1829.

46820 (53).

"Behring Sea named *Bassin du Nord, ou de Behring.*

"Pacific named *Grand Ocean, Mer de Sud, ou Ocean Pacifique.*

"'Asien.' Schmidt. Berlin, 1829.

46820 (52).

"Behring Sea named *Kamtschatkisches Meer.*

"Behring Strait named *Behring Strasse.*

"Pacific named *Das Grosse Weltmeer.*

"'Atlas Universel de Géographie.' Lapie, Paris, 1829.

"No. 16. A Map of the World on Mercator's Projection. Separately dated on engraving, 1832.

"Behring Sea is marked *Mer de Béring* in letters same size and style as those employed for *Baie de Baïfin*, and larger than those used for *Mer d'Okhotsk*, *M. de Saghalien*, &c.

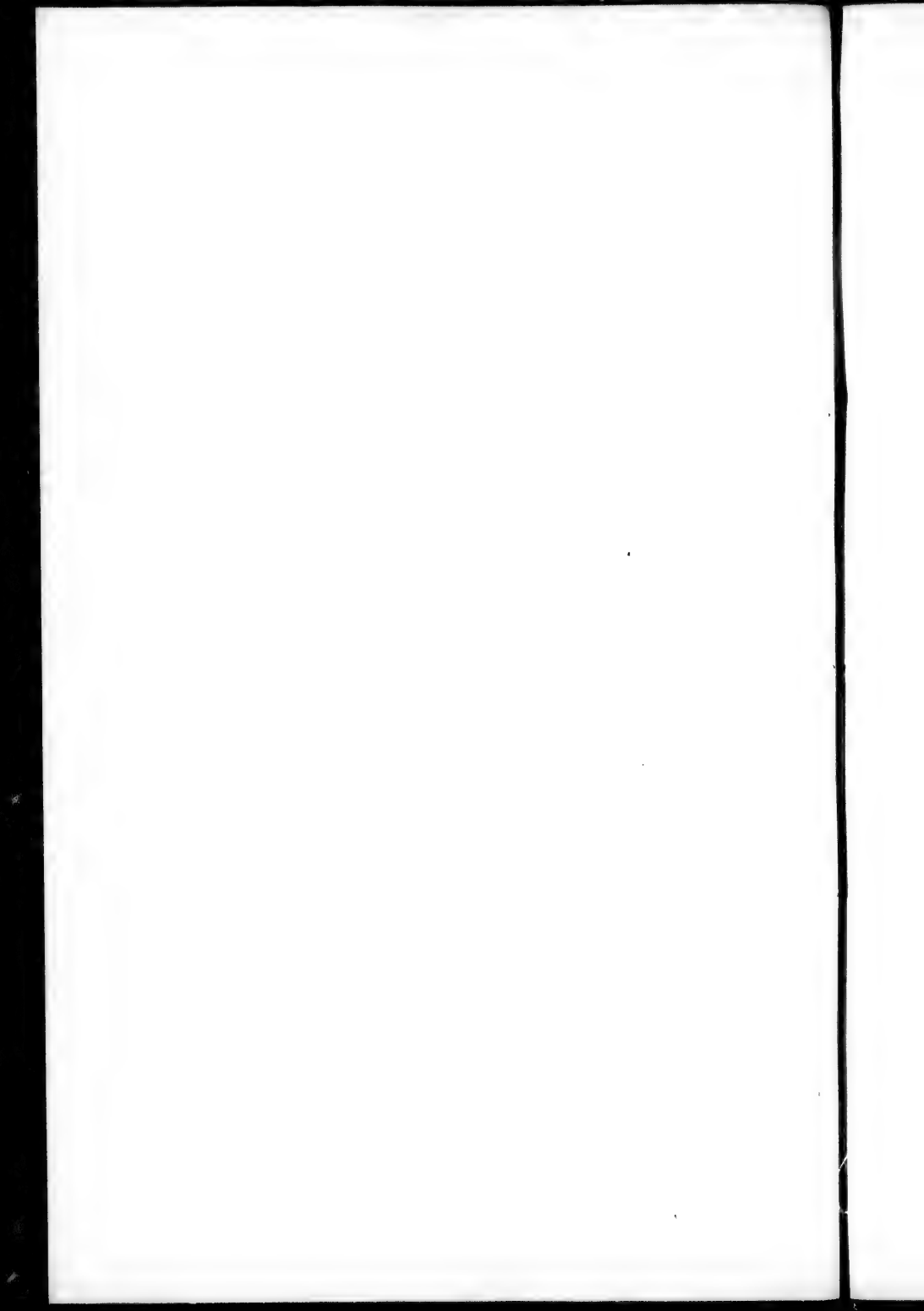
"The Pacific is named *Grand Ocean Equinozial*, this name running along the Equator.

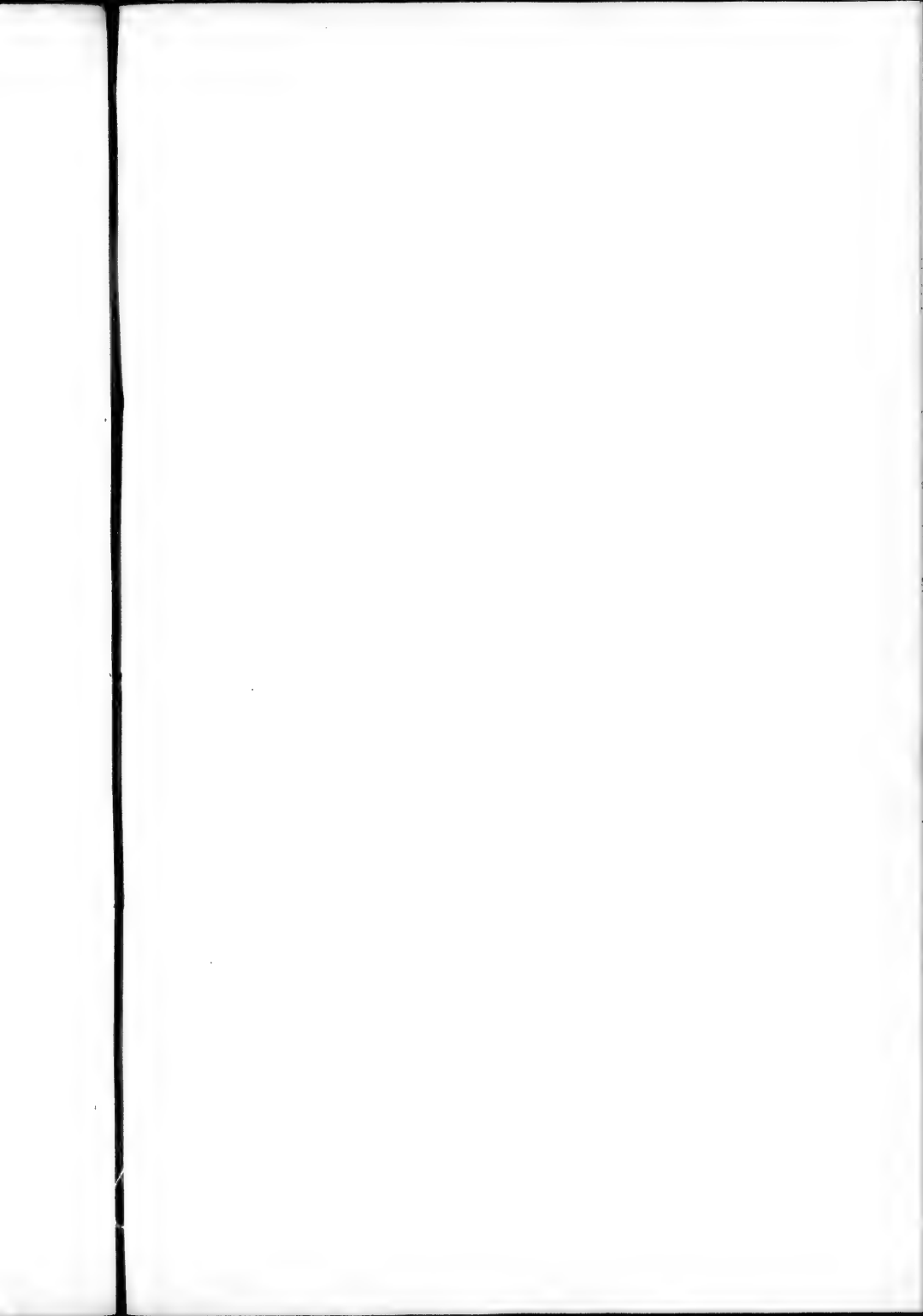
"No. 17. Map of the World in Hemispheres. Separately dated on engraving, 1831.

"Behring Sea named as above, but the North Pacific named *Grand Océan Boréal*.

"(The spelling of Béring on these Maps, and the names used for the Pacific, seem to show that they, or previous editions of the same, were not employed by the negotiators.)

- S. 76 (22). "An Atlas of Modern Geography." A. Arrowsmith. 1830.
 "Map 1. Behring Sea shown without name.
 "North Pacific.
 "Map 28. Similar to last.
- S. 23 (11). "'A Comparative Atlas.' By A. Arrowsmith. London, 1830.
 "Map 27. Western Hemisphere.
 "The whole of Behring Sea shown, but without name.
 "Bering's Strait. North Pacific Ocean.
 "Map 28. North America.
 "Greater part of Behring Sea shown, but without name.
 "Bering's Str. North Pacific Ocean.
 "America." Prof. J. M. F. Schmidt. Berlin, 1830.
 "Behring Sea named *Meer von Kamtschatka*.
 "North Pacific named *Die Nord See*.
 "Chart showing the Track of H.M.S. 'Blossom' in Narrative of a Voyage to the Pacific and Bering's Strait, 1825-28." London, 1831.
 "Behring Sea shown, but without name.
 "Bering's Strait. North Pacific Ocean.
- S. T. W. (4). "'Hydrographical Chart of the World.' A. Arrowsmith. London. New edition. 1832.
 "Behring Sea named *Sea of Kamtschatka*.
 "Bering's Strait. North Pacific Ocean.
- 980 (13). "'Arrowsmith's Chart of the Pacific Ocean.' Another edition, corrected to 1832, and with note below title, stating that corrections made in 1810, 1814, 1817, 1818, 1822, 1826, and 1832.
 "In the 1832 edition the size and general outlines are as before, and Behring Sea is still without name. Other inclosed seas named as before.
 "(It may be supposed that the negotiators for Treaty of 1825 were supplied with corrected copy to 1822, and it is clear that on this copy the nomenclature must have been the same as on those of earlier and later dates.)
- S. 63, 7. "Map of the Pacific Ocean in 'Arrowsmith's Atlas.' London, 1835.
Behring Sea, or Sea of Kamtschatka.
- 920 (106). "Weltkarte in Mercator's Projection." Reichard. Nürnberg, Neue Aus Gabe, 1839.
 Behring Sea named *Meer von Kamtschatka*.
Bering's Strasse. Nordlicher Grosser Ocean
 "Carte de L'Océan Pacifique." In Atlas accompanying DuRoi de Moflas' work. Paris, 1844.
 Behring Sea without name, though *Mer d'Okhotsk*, &c. prominently named.
Dét. de Bering. Grand Océan Septentrional.





The particulars above given show in what manner and to what extent the terms *Sea of Kamtchatka* and *Behring Sea* had been and were at about the time of the Ukase of 1821 and the consequent negotiations employed in Maps, upon which the United States appears to rely rather than upon distinct geographical definitions.

In regard to the term *North-Eastern Sea* or *Eastern Ocean*, which, it is claimed, was also used as a distinctive name for what is now generally known as Behring Sea, it is to be remarked that neither of these terms is used upon any of the Maps contained in the selected list brought forward by the United States.

United States' Case, p. 53.

1. *North-Eastern Sea*.—The only instances cited for the use of *North-Eastern Sea*, as another name for Behring Sea, are the first and third Charters of the Russian-American Company.

In the first—the Ukase of 1799—the expression used is *North-Eastern Ocean*—not *North-Eastern Sea*—which applies to the waters from Behring Strait down to 55° north latitude, and therefore includes waters outside Behring Sea.

In the third Charter—of 1844—*North-Eastern Sea* is used; the southern limit is 50° 40' north latitude, and the term therefore obviously includes the waters south of Behring Sea.

North-Eastern Sea is also used in the Ukase of Nicholas of the 29th March (10th April), 1829 (confirming the Charter of 1821), and evidently applies to all the waters down to 54° 40' north latitude. This passage is not cited by the United States.

The United States are apparently unable to find any instances of the use of *North-Eastern Sea*, meaning Behring Sea, as distinct from the Pacific Ocean, and, being obliged to explain the meaning of the term in the passages above quoted, they assume the interpretation which they desire.

2. *Eastern Ocean*.—The authorities quoted by the United States for the use of this term as applied to Behring Sea only are two in number: (a) A Map which forms the frontispiece of "Coxe's Russian Discoveries;" (b) *Globe*, by D. Adams, London, 1797. This is quoted in a foot-note to the list of Maps, p. 290, vol. i. It did not appear in the list appended to Mr. Blaine's note of the 17th December, 1890.

With regard to (a), it may be observed that, although in the Map on the frontispiece of Coxe,

Eastern Ocean is written on the ocean to the north of the Aleutian Islands, while no name is actually written across the comparatively small portion of the ocean to the south of these islands, which is included by the Map, in a further Map (facing p. 248 of Coxe's book, ed. 1803) of Krenitzin's and Levasheff's Voyage to the Fox Islands in 1768 and 1769, *Eastern Ocean* is written so as to include the waters south of the Aleutian Islands as well as those to the north.

Also, that the first sentence of Chapter I, Part I (p. 21, ed. 1803), is:—

"The possession of Kamtschatka was soon followed by voyages of discovery to the *North Pacific Ocean*."

Then follows Peter the Great's plan of a voyage to ascertain the separation, contiguity, or connection of Asia and America, with his instructions to Vitus Beering.

Further, at p. 110 (ed. 1803), Coxe says:—

"A full and judicious account of all the discoveries hitherto made in the *Eastern Ocean* may be expected from Müller. Meanwhile, the following narrative, extracted from original papers, and procured from the best intelligence, may be acceptable to the public."

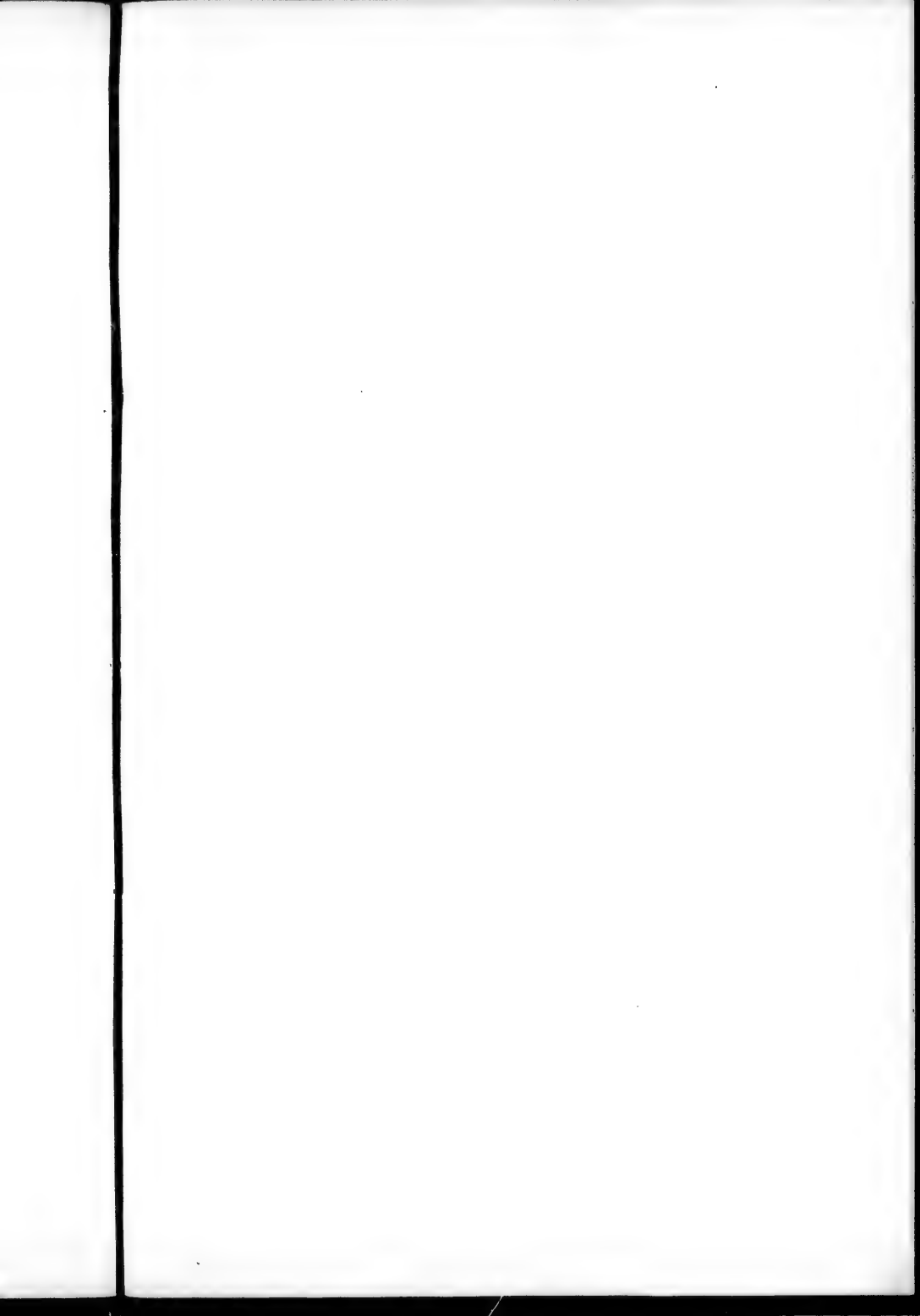
The narrative that follows is one of voyages to the Aleutian Islands and Kadyak, and it is mentioned that the explorers in some instances first sailed south from Behring Island and Kamtschatka in search of land (pp. 142, 150, ed. 1803); but being disappointed, bore north for the Aleutian Islands.

It is thus quite clear that the term *Eastern Ocean*, as here employed, is not a special designation of Behring Sea, but a synonym of *Pacific Ocean*, precisely analogous to the term *Western Ocean*, which is often employed in Europe for the *Atlantic Ocean*. Behring Sea was, in fact, a part of the *Eastern Ocean* of Coxe, who thus uses it in the same sense as that in which it was employed in the Russian Charters above alluded to.

(b.) The Globe by D. Adams, London, 1797, which is the only other authority quoted for the limited application of the term *Eastern Ocean*, has not been found, though two earlier Globes by the same author, dated 1769 [?] and 1772 [?], are in the King's Library at the British Museum.

These Globes show a very imperfect knowledge of the regions in question.

The names, which are in Latin, and the con-



figuration are the same as in Müller's Map, and published 1761, above referred to, p. .

But granting that "Eastern Ocean" is confined to Behring Sea on the Globe in question, this authority cannot be set against that of other Maps, which clearly show that the term, which was rarely used, was not confined to the waters north of the Aleutian Islands, and was in most cases a synonym for the "Pacific Ocean." The following may be quoted:—

Sayer and Bennett's East India Pilot Chart, No. 23, 1780. "Eastern Ocean" extends along the parallel of 18° north latitude and from 125° east to 156° east longitude, or from near Lazon Island beyond the Ladrone Islands. In Royal Geographical Society's possession.

Map of Asia, according to Sieur d'Anville, *Ibid.* published by R. Sayer, London, 1772. "Eastern Ocean" is placed in about the same position as in preceding Map quoted.

Holl's Atlas, Map of the World on Mercator's projection [? date]. "The Eastern Ocean or Parts unknown" is written off the north-east shore of Asia, north of Japan.

Map showing "the Russian Empire" in view of the Russian Empire, 3 vols., 8vo. Took, London, 1800 (quoted above, p.). The North Pacific is named as a whole "Eastern Ocean," the first word lying to the north, the second to the south of the Aleutian Islands. (*Eastern Ocean* is used in the same general sense in the text.) In British Museum.

"Charte des Nordöstlichen Theils von Sibirien des Eismeers, des Ost-Oceans und der Nord-westlichen Küste von America—Entworfen von Samtsehen," from Sargchef's account of "Billing's Voyages," German translation, Leipzig, 1805 (quoted above, p.).

Ost-Ocean oder das Stille Meer.

A Russian Map, published at St. Petersburg, and entitled "Map on Mercator's projection of a part of the *Eastern Ocean* adjacent to North-West America between the Straits of Fuca and the Gulf of Renai," edition of 1826. The words "Part of the Eastern Ocean" are written in three horizontal lines off the portion of the coast given. In F. O.

A Russian Map, published at St. Petersburg 1826, with same title as above, but giving the coast from the Gulf of Panamá to the Straits of Fuca. Part of the Eastern Ocean is written in like

manner in three horizontal lines opposite the coast given.

In F. O.

A Russian Map, published at St. Petersburg, entitled "Map of the entrances to Port of New Archangel through the Sounds of Sitka and Klokatcheff, drawn up from descriptions of Sturman Vasileff I in 1809 and Vasileff II in 1833, and engraved in Hydrographic Department of Ministry of Marine, 1848." "*Eastern Ocean*" is written off the portion of the coast given in three horizontal lines.

Ibid.

A Russian Map, published at St. Petersburg, entitled "Map on Mercator's projection of the southern portion of the Koloschensky archipelago, drawn up from various journals and Maps, and engraved in the Hydrographical Department of the Ministry of Marine, 1853." "*Eastern Ocean*" is written in a perpendicular line along the coast given.

Ibid.

A Russian Map, published at St. Petersburg in 1859, entitled "General Map of Asiatic Russia or Siberia, and the Russian North-American Possessions. St. Petersburg, 1859." The ocean south of the Aleutian Islands is marked "*Eastern, Great, or Pacific Ocean*."

(E. 2.)

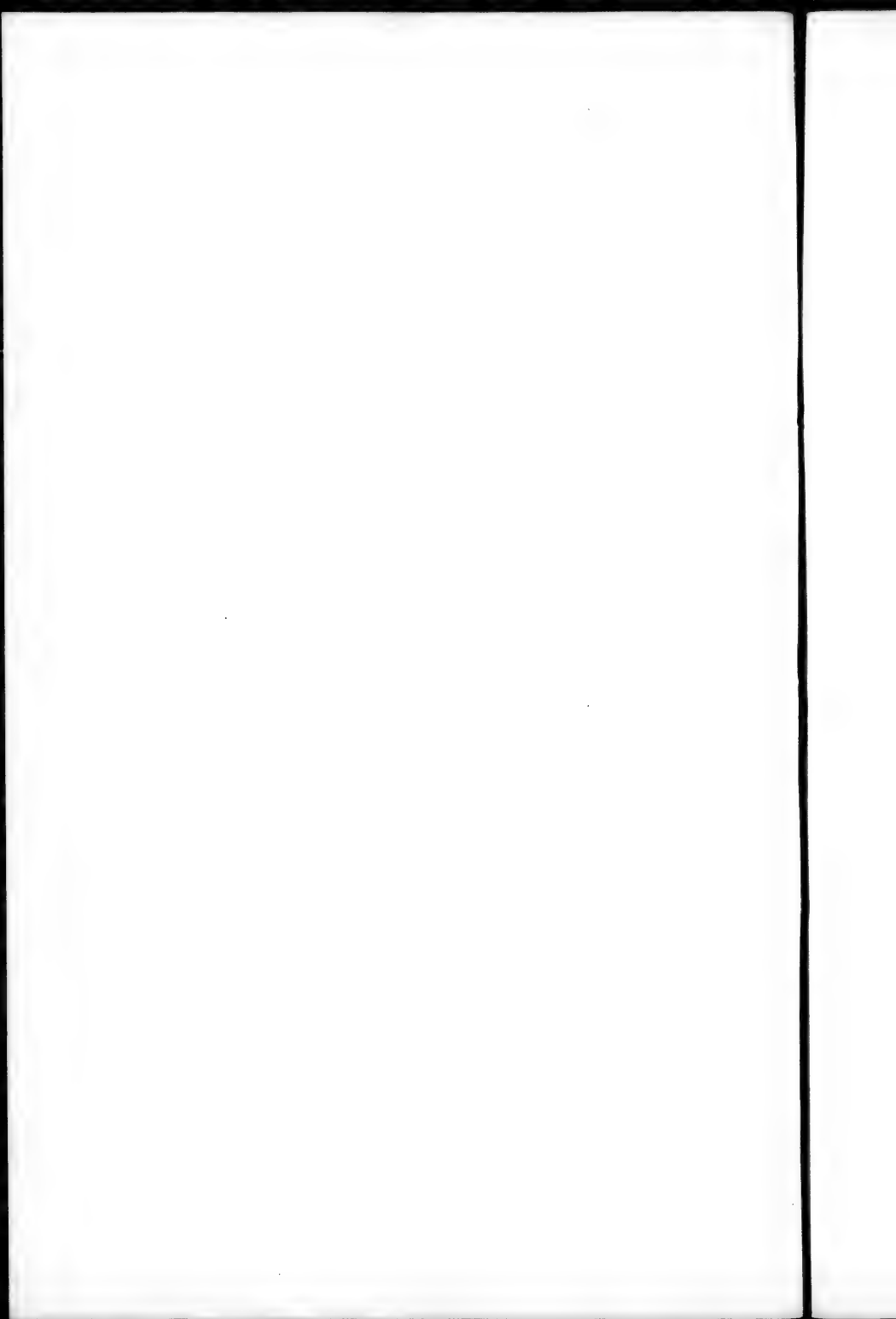
Respecting the meaning of the phrase *Pacific Ocean* in the Treaty of 1825, it is shown in the British Case that the Ukase of 1821, the consequent protests and negotiations, with the Treaties of 1824 and 1825, referred to one and the same area of ocean, namely, the "Ocean, commonly called the Pacific Ocean," including that portion of the ocean now generally known as Behring Sea, but which was in earlier times often named the Sea of Kamtschatka.

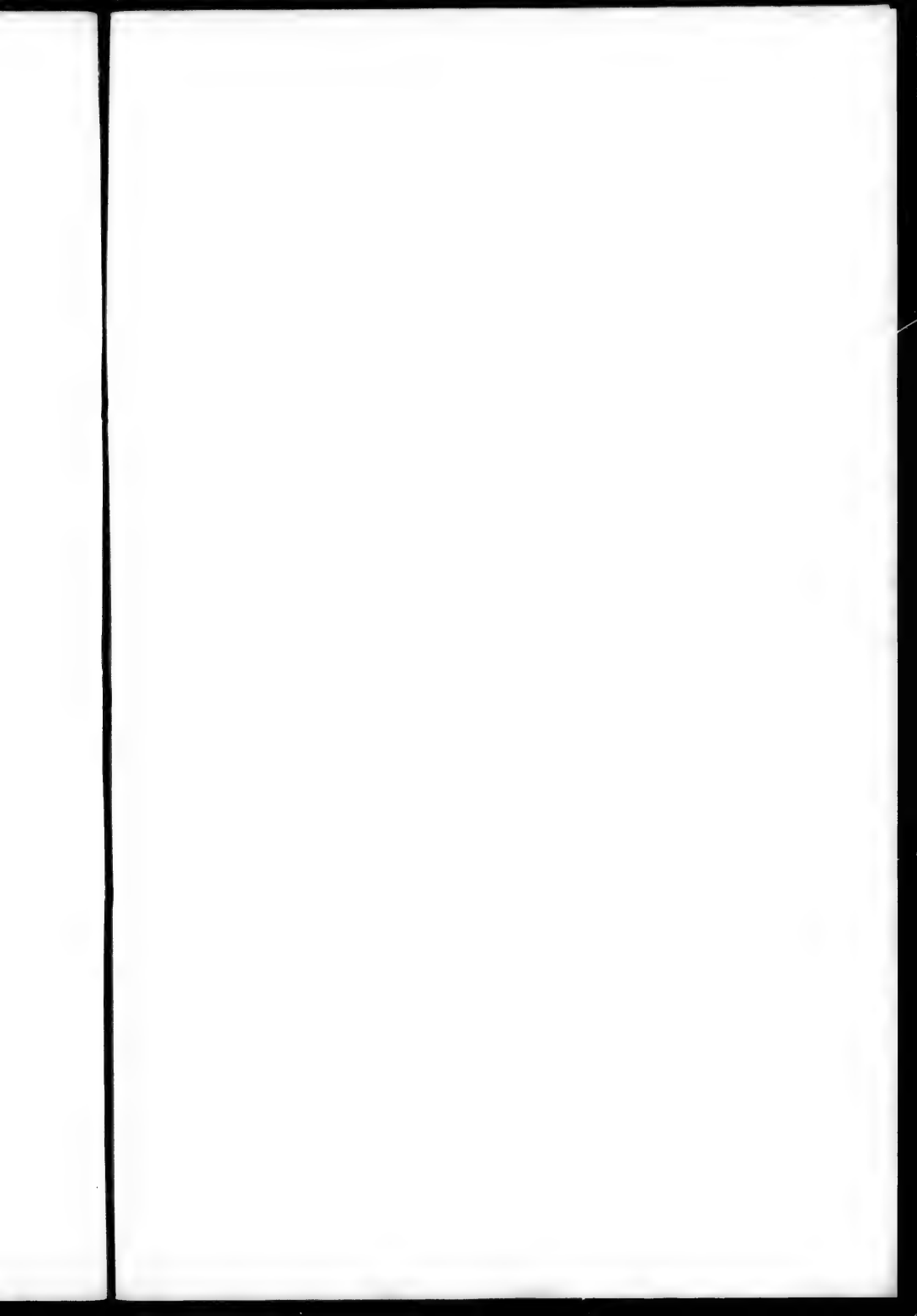
The Ukase of 1821 did not specifically mention Behring Sea under any name, and the negotiations show that this sea was throughout included in the discussions. Therefore, the absence of specific mention of this particular part of the ocean in the Treaties can in no sense be referred to as an "implied recognition" of a special Russian control over Behring Sea by "two great nations," as is further claimed in the Case of the United States.

United States' Case, p. 57.

Ibid., pp. 53, 54.

Two documents in particular are quoted from in the Case of the United States in support of
[843] U*





its contention as to the understanding of Russia on this subject.

The second is the Report of a "Special Committee consisting of some of the highest dignitaries of the Empire," dated the 21st July, 1824.

These documents are dealt with elsewhere in this Counter-Case.

(b.) The Treaties, negotiations, and declarations of Russia touching the reference to Behring Sea are referred to in another part of the Counter-Case.

(F.)

United States' Case, p. 57.

f (1). So far as the fur-seals are concerned, it will be made to appear in what follows that the jurisdiction in question (*i.e.*, of Russia over Behring Sea) was always exercised for their protection.

Ibid., p. 59.

f (2). The great object had in view by the Russian Government in excluding Behring Sea from the effect of the Treaties of 1824 and 1825, and also in limiting the privilege of access and trade for even ten years to the coast south and east of Yakutat Bay, was obviously the protection of the valuable fur industry.

Ibid., p. 41.

f (3). That the limit of 100 miles enabled Russia to protect the Pribyloff herd.

Ukase of 1821.
British Case, p. 38.
United States' Case, pp. 38, 39.

It is to be noted that the object of the Ukase of 1821 as explained in the British Case is similarly put in the United States' Case. While the United States' Case states that the provisions of the Ukase "were sufficient to enable" Russia to protect what is termed, for the first time in history, the "seal-herd" of the Pribyloff Islands, neither in the documents of the period nor in the Ukase itself is there any reference to the special property upon which it will be seen that the United States now chiefly rely for the right claimed to protect the fur-seal.

Ibid., pp. 26-33.

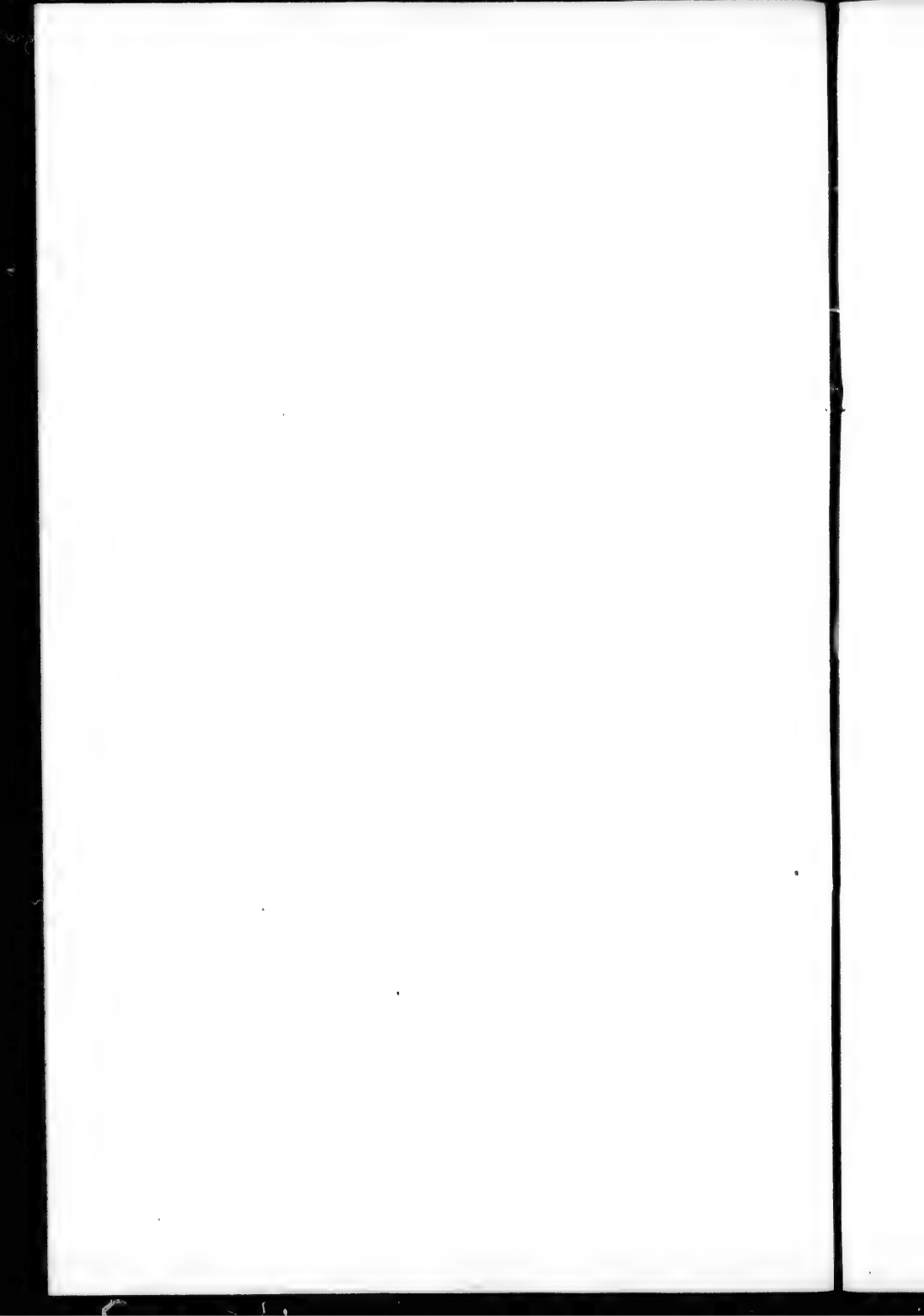
So far as the then exclusive privileges were desired by Russia, it is claimed, even in the United States' Case, that the chief object of the exclusion related to the waters outside of what is now called Behring Sea. It was in the waters below this sea that the fur-seal industry was prosecuted and the competition in trade was waged, the waters above being resorted to at that time more by explorers than by hunters or traders.

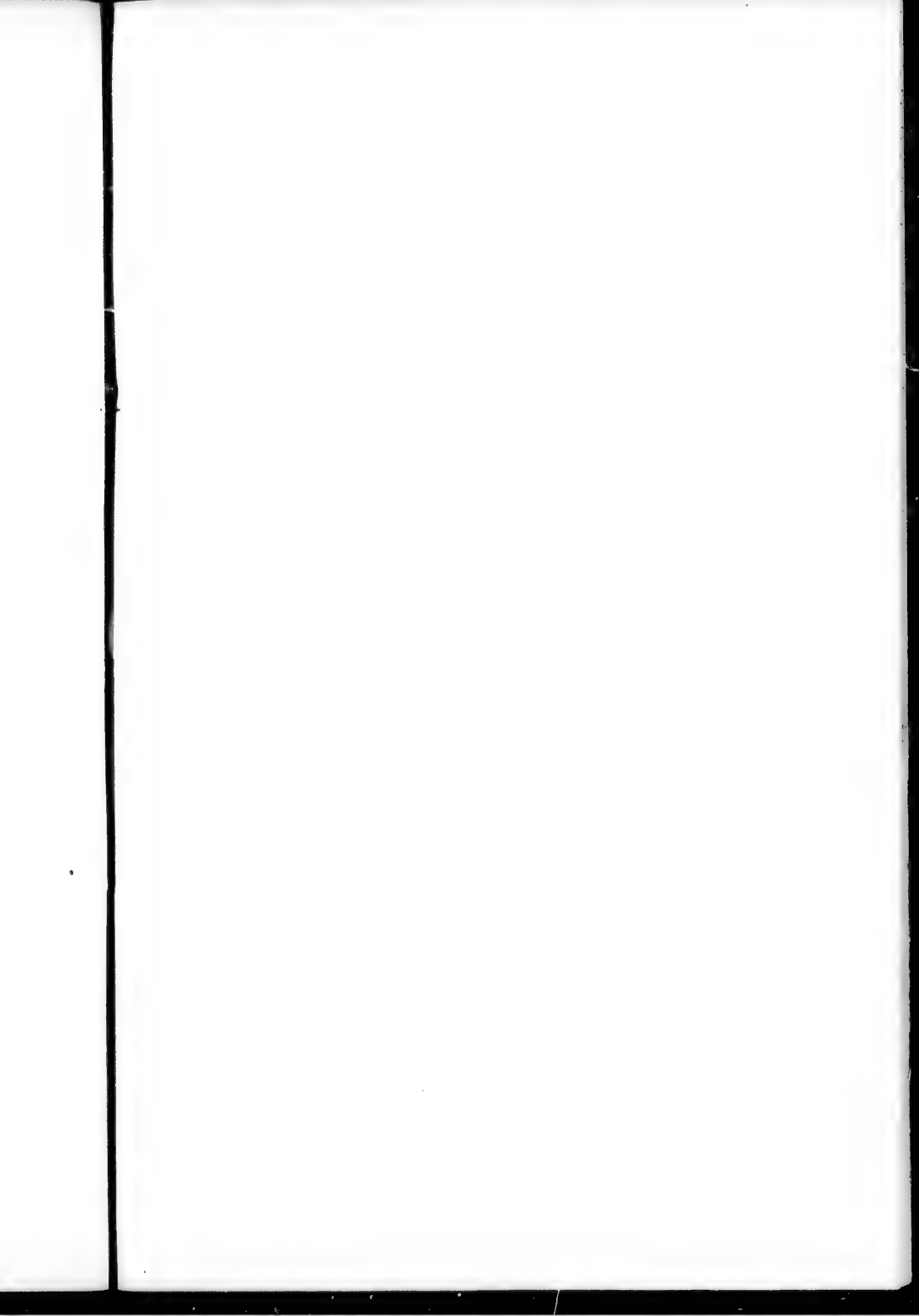
Ibid., p. 39.

The Ukase pretended only to grant exclusive rights of "commerce, whaling, and fishery" upon the certain territory defined in paragraph 1 of the Rules established for the Limits of Navigation set out in the United States' Case.

It cannot be contended with success that the object of the Ukase was the protection of the fur-seal, since the United States now insist that the fur-seal is not a fish but a domesticated animal.

The United States' Case, under the heading
[843] X





of "Reason why Limit of 100 miles chosen," supports the British Case.

The Governor-General of Siberia said it was sought to establish these limits to marine jurisdiction in order to secure to the Russian-American Company a *monopoly of trade*. United States' Case, pp. 39, 40.

The claim for exclusive jurisdiction was based not upon a desire to protect the fur-seal, but upon an agreement reached after negotiations between other nations which had executed the Treaty of Utrecht, wherein the 100 miles limit was adopted for purposes wholly foreign to the fur-seal or other fisheries.

The language of Mr. G. Canning to the Duke of Wellington is in point under this head:—

"I have, indeed, the satisfaction to believe, from a conference which I have had with Count Lieven on this matter, that upon these two points—the attempt to shut up the passage altogether, and the claim of exclusive dominion to so enormous a distance from the coast—the Russian Government are prepared entirely to waive their pretensions. The only effort that has been made to justify the latter claim was by reference to an Article in the Treaty of Utrecht, which assigns 30 leagues from the coast as the distance of prohibition. But to this argument it is sufficient answer that the assumption of such a space was, in the instance quoted, by stipulation in a Treaty, and one to which, therefore, the party to be affected by it had (whether wisely or not) given its deliberate consent. No inference could be drawn from that transaction in favour of a claim by authority against all the world. British Case, Appendix, vol. ii, p. 22, No. 14.

"I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the Russian Empire as a *mare clausum*, and to extend the exclusive territorial jurisdiction of Russia to 100 Italian miles from the coast, will be publicly recalled."

The Agent for the United States now claims that a more recent precedent for this claim might have been cited by referring to the IVth Article of the Nootka Sound Convention between Great Britain and Spain, "whereby," the Agent adds, "the former *conceded* to the latter exclusive jurisdiction of the sea for 10 leagues from any part of the coasts already occupied by Spain." United States' Case, p. 40.

No Treaty, however, exists upon which the claim in this case can be based.

In the two Treaties just mentioned no general principle prevails. In the one case 30 leagues were agreed to as the extent of jurisdiction; in the other 10 leagues; and while in the latter

case the 10 leagues were agreed to on part of the very coast in question and below Behring Sea, this exclusive jurisdiction enjoyed by Spain disappeared before the Conventions of 1824 and 1825.

It found no place in either of these Treaties.

United States' Case, pp. 41 and 49.
British Case, p. 38.

Further on the United States makes an admission that "the Ukase of 1821 was merely declaratory of pre-existing claims to exclusive jurisdiction *as to trade*."

The United States' Case is in fact based on no previous claim and upon no Treaty.

United States' Case, Appendix, vol. i, p. 139.

The despatch from Mr. Middleton to Mr. Adams shows that in 1822 Mr. Middleton treated the claim of the alleged precedent in the Treaty of Utrecht as a farce, stating that he had pointed out, when this argument was used, that "a still better precedent might have been pointed out to them in the Papal Bull of 1493, which established as a line of demarcation between the Spaniards and the Portuguese a meridian to be drawn at a distance of 100 miles west of the Azores."

Again, he writes in the same despatch:—

Ibid., p. 136.

"For some time past I began to perceive that the provisions of the Ukase would not be persisted in. It appears to have been signed by the Emperor without sufficient examination, and may be fairly considered as having been surreptitiously obtained."

The efforts which are said to have been made by the United States and England to obtain a renewal of the provisions of the ten years' clause in the Convention refer to the Agreement which permitted trading contrary to the policy of colonial exclusion recognized at the time.

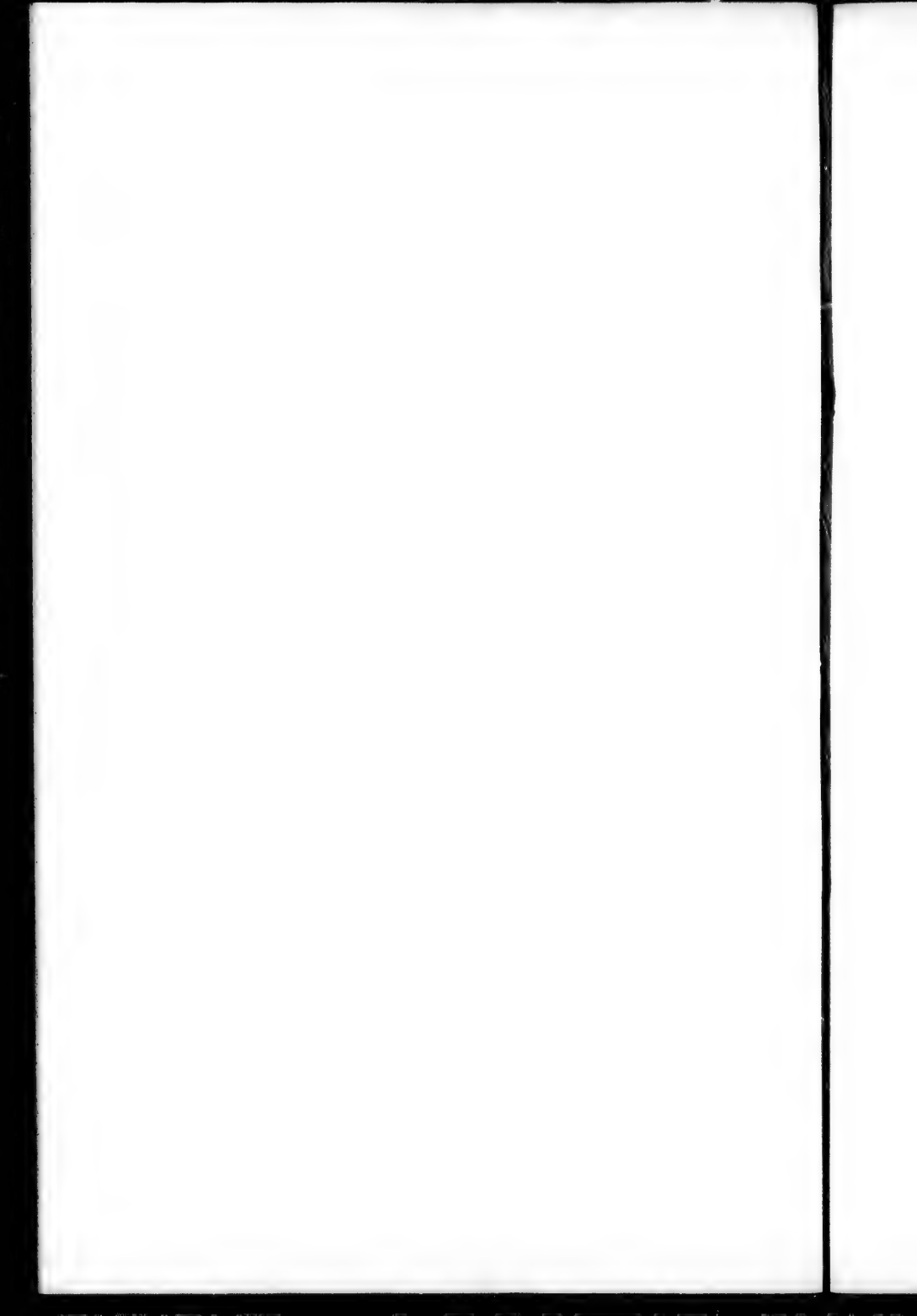
British Case, pp. 79-82.

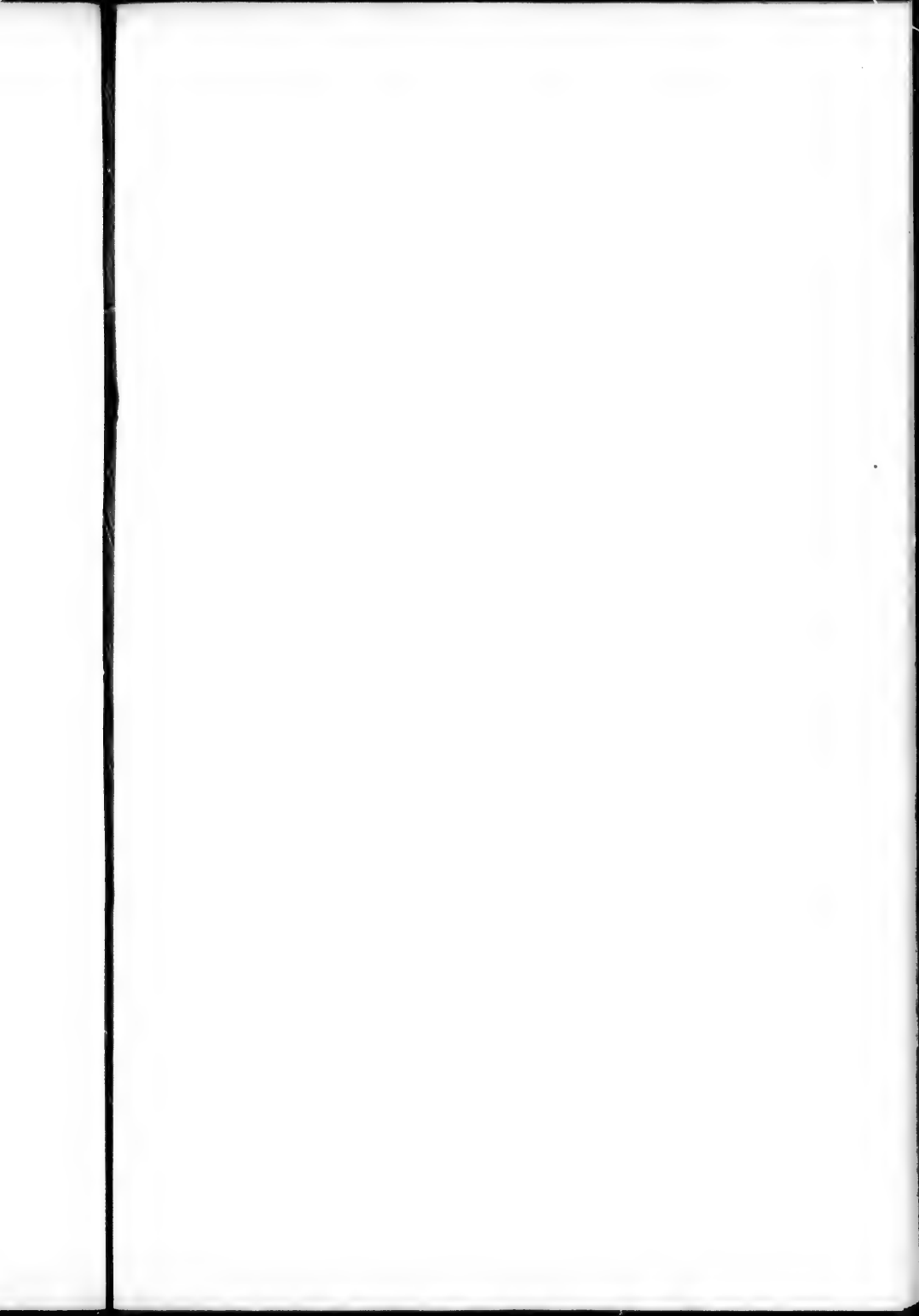
That the United States made such efforts, it is true; but as shown in the British Case, upon a refusal to renew the clause, the United States insisted that, irrespective of it, their material rights in the subject were sustained by the law of nations, regardless of Treaty provisions.

No authority is given for the statement that England pressed this subject upon the attention of the Russian Government at any time, and it is not now deemed necessary to discuss the right of Russia to prohibit foreign trade on the coast referred to in this Article, whether below or above the Aleutian archipelago.

Ibid.

The case of the "Loriot" and the action of the President of the United States at the time have been dealt with in the British Case.





The notice mentioned as published by the United States' Government in 1845 speaks only of *interior* harbours, bays, &c., and was at most an intimation of the *claim* of Russia that these and other places where Russian establishments were situated should not be visited. The notice did in no way apply to Behring Sea outside of its harbours, bays, &c.

United States' Case, p. 59.

Referring to a similar notice, the United States' Minister at St. Petersburg thus wrote to the Russian Government when discussing the case of the "*Loriot*":—

British Case, Appendix, vol. II, Part II, p. 13.

"Nor is the 'informal notice' (lying before the Undersigned) published, at the repeated request of Baron de Krudener in the '*Washington Globe*,' on the 22nd August, 1835, to which his Excellency has referred, susceptible, in the estimation of the Undersigned of a construction which can ascribe to the American Government, or any of its citizens, the knowledge that a voyage like the one contemplated by Captain Blinn was inconsistent with any colonial interdict or general pretension of the Imperial authorities. Far from it. That publication, while characteristic of the frank and confiding readiness with which the American Executive proceeded to execute a wish expressed by a Power whose intercourse and relations inspire no distrust, compels, as is conceived, with unfeigned deference, the opposite construction, and imports a recognition of the entire lawfulness of such a voyage. In this spirit, and in this only, was it originally framed, and has ever since, without a question, been understood by the Government and people of the United States. True, it adverts to a Notice issued by the Governor of the Russian Colonies after the expiration of the IVth Article of the Convention, to the effect that the masters of American vessels could no longer claim the right they enjoyed under that IVth Article of landing at all the landing-places, without distinction, belonging to Russia on the north-west coast; and it further proceeds to observe, to all interested in the trade, that under the IIInd Article of the same Convention it is necessary for all American vessels resorting to any point where there is a Russian establishment to obtain the permission of the Governor or Commander. To the scope of phraseology of this 'informal notice' it is believed Baron de Krudener never, orally or in writing, took the slightest exception. It will surely be perceived by his Excellency Count Nesselrode to contain no inhibition of trading voyages generally to the north-west coast of America, but, on the contrary, to confine its admonition expressly and precisely to 'landing-places belonging to Russia' and to 'any point on the coast where there is a Russian establishment.'"

The letters addressed to the Russian Company anterior to the Treaty were clearly for the

United States' Case, p. 60.

purpose of endeavouring to assuage the anxiety of that body.

United States' Case, p. 60.

The letter of the 18th July, 1822, is referred to in order to show Russia's alleged object in excluding Behring Sea from the Treaties was the protection of the fur industry. The extract from the letter in the United States' Case is as follows:—

"At the same time I am authorized to assure you that every effort will be made to secure the adoption of such rules as will effectually protect the Russian-American Company from inroads on the part of foreigners upon their vested privileges, in strict conformity not only with the privileges granted by highest act, but also with the Edict of the 4th September, 1821."

The British translation of this document differs from that of the United States.

The two paragraphs in the original are translated as follows:—

[See Mr. Fairholme's Translation, p. 17.]

Another extract from the Russian correspondence relied on by the United States is as follows, from a letter of the 18th August, 1824, where Count Nesselrode is said to have written to the Minister of Finance:—

"I flatter myself with the thought that these documents will convince you, most gracious Sir, as well as the Board of Administration of the Russian-American Company, that it is His Majesty's firm determination to protect the Company's interests in the catch and preservation of all marine animals, and to secure to it all the advantage to which it is entitled under the Charter and privileges."

Here again a serious difference in the translations exists:—

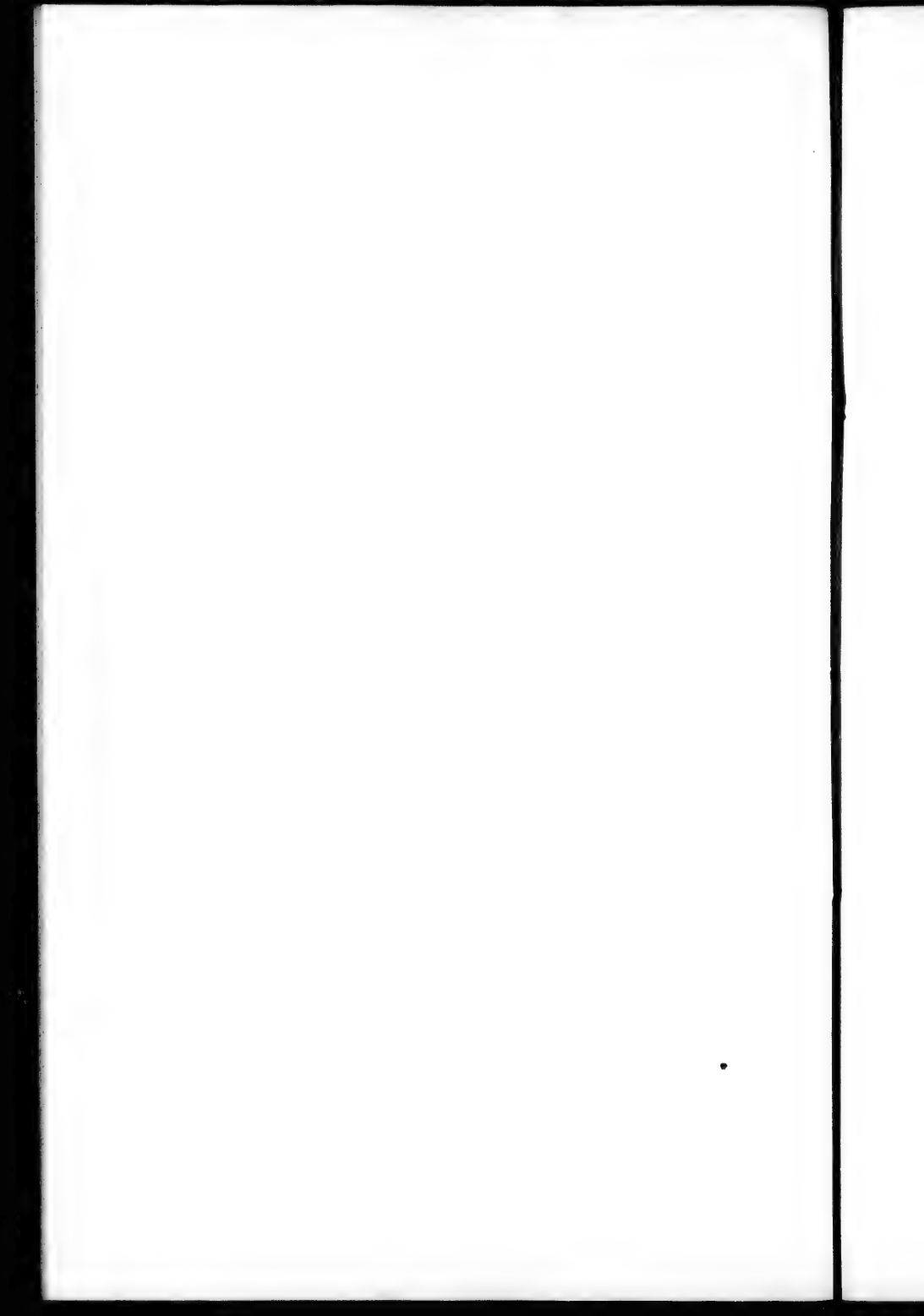
[See Mr. Fairholme's Translation, p. 19.]

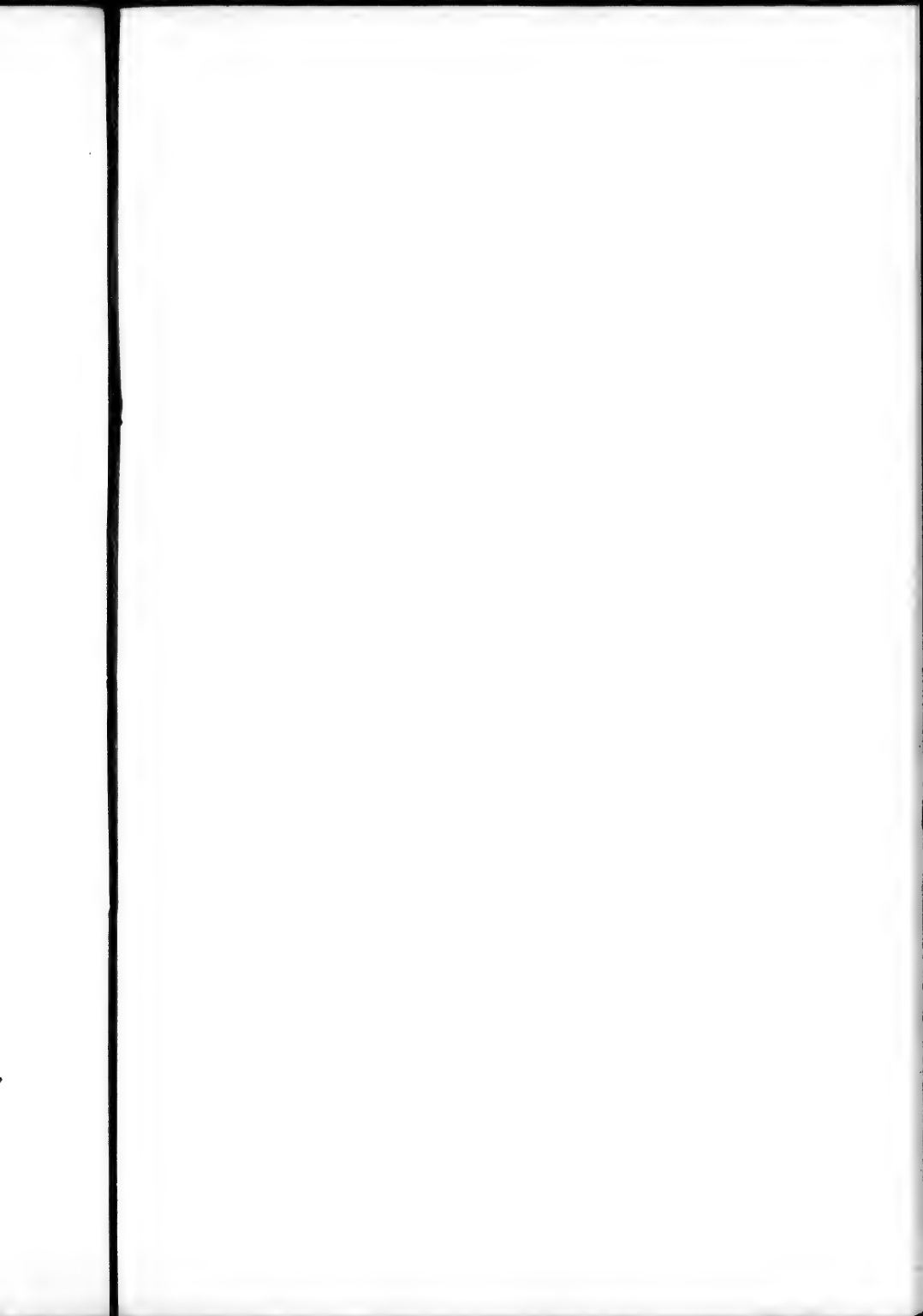
British Case, p. 48.

The claim that the Ukase enabled Russia to protect the fur-seal of the Pribyloff Islands, as mentioned in the United States' Case, is in contrast to the chief point now urged by the United States, that no regulations short of a general prohibition against pelagic sealing, both in Behring Sea and the North Pacific Ocean, will save that animal from extermination.

United States' Case, p. 40.

There is not disclosed in the correspondence between Russia and the United States, or between Russia and Great Britain, any suggestion of a desire on the part of Russia to afford extra-





ordinary protection to any fur-bearing animal or to the fisheries in these waters.

An attempt is made by the United States' United States' Case, p. 24. to make it appear that fur-seals were the great object of the hunters who followed in the wake of the early discoverers.

Cook, however, shows that in 1799, in the fur trade with islands between Kamtchatka and America, the sea-otters were the object of the search of Russian merchants. They, rather than the fur-seal, were, and for a long time remained, the inducements to the Russian Settlements made on the islands—Unalaska and Kadiak. "Voyages round the World," pp. 370, 371.

Bancroft says:—

"The sea-otter was already known to the Russians from a few specimens captured on the coast of Kamtchatka and among the Kurile Islands. Soon the castaways discovered the presence of these animals in the surrounding waters. The flesh seemed to them most palatable, and Steller even considered it an anti-scorbutic. The skins were preserved by the survivors, and subsequently led to the discovery of a wealth that Bering and Chirikoff had failed to see in their voyages of observation." Bancroft's "Alaska," p. 88.

And again:—

"One would think that, with full knowledge of the sufferings and dangers encountered by Bering's and Chirikof's expeditions, men would hesitate before risking their lives for otter-skins. But such was not the case. When a small vessel was made ready to follow the course of 'Sv Petr' and the 'Sv Pavel,' there was no lack of men to join it, though some of them were still scarcely able to crawl, from the effects of former disaster. As the little sable had enticed the Cossack from the Black Sea and the Volga, across the Ural Mountains and the vast plains of Siberia to the shores of the Okhotsk Sea and the Pacific, so now the sea-otter lures the same venturesome race out among the islands and ice and fog-banks of ocean." Ibid., p. 99.

The record in the British Case of discoveries and of commerce, compiled mainly from United States' authorities, satisfactorily establishes that in these enterprises on the north-west coast Great Britain and the United States led the way, and in the end secured the chief prizes of the trade of the region. The protection of the fur-seal was of no more importance to Russia than to all others depending on the fur trade. British Case, pp. 14-22, 29-32, 77-79, 83-88.

Referring to the Spanish claim and the Nootka Sound Convention of 1790, Article III is quoted. United States' Case, p. 31.

It is said to be the basis of the adjustment between Russia, the United States, and Great

Britain, in 1824 and 1825, respecting the navigation of the Pacific Ocean and the conflicting claims to the territory of the north-west coast.

This Article or Treaty made no reference to the fur trade or to the protection of seal life.

The Treaty between Great Britain and Spain did not recognize for either nation exclusive navigation over the Pacific Ocean for a distance of over 100 miles from shore, nor did it recognize special property in the animals which might breed on the coasts.

For "colonial" purposes only it established a distance of 10 miles from the coast as a limit for exclusive jurisdiction.

The principles stated by the Nootka Sound Convention are summed up in the letter of Mr. Adams to Mr. Rush, 22nd July, 1823, as follows:—

"American State Papers, Foreign Relations," vol. v, p. 447.

"1. That the rights of fishery in the South Seas, of trading with the natives of the north-west coast of America, and of making Settlements on the coast itself for the purposes of that trade, north of the *actual* Settlements of Spain, were common to all the European nations, and, of course, to the United States."

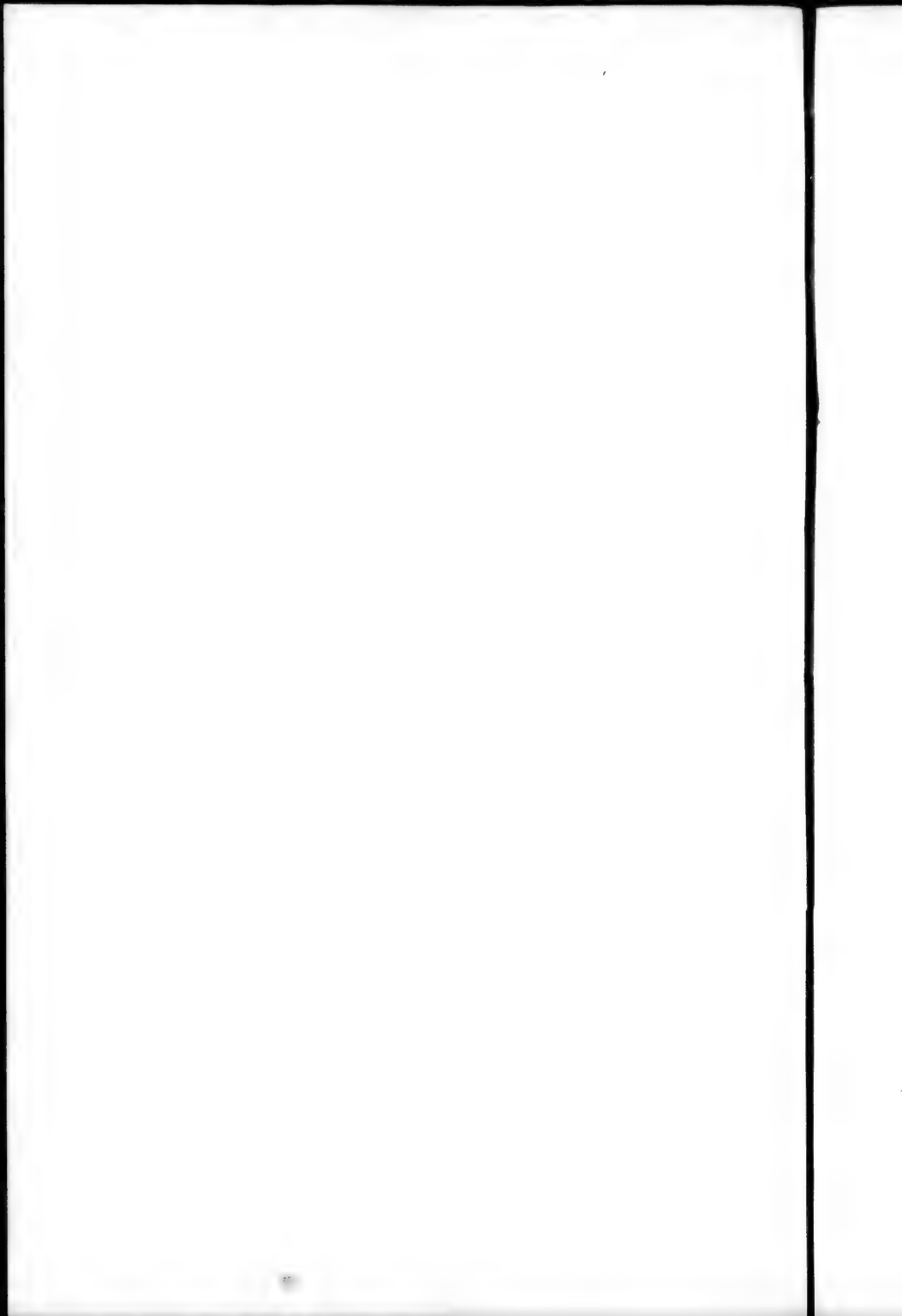
"2. That so far as the *actual* Settlements of Spain extended, she possessed the exclusive rights, territorial, and of navigation and fishery, extending to the distance of 10 miles from the coasts so *actually occupied*.

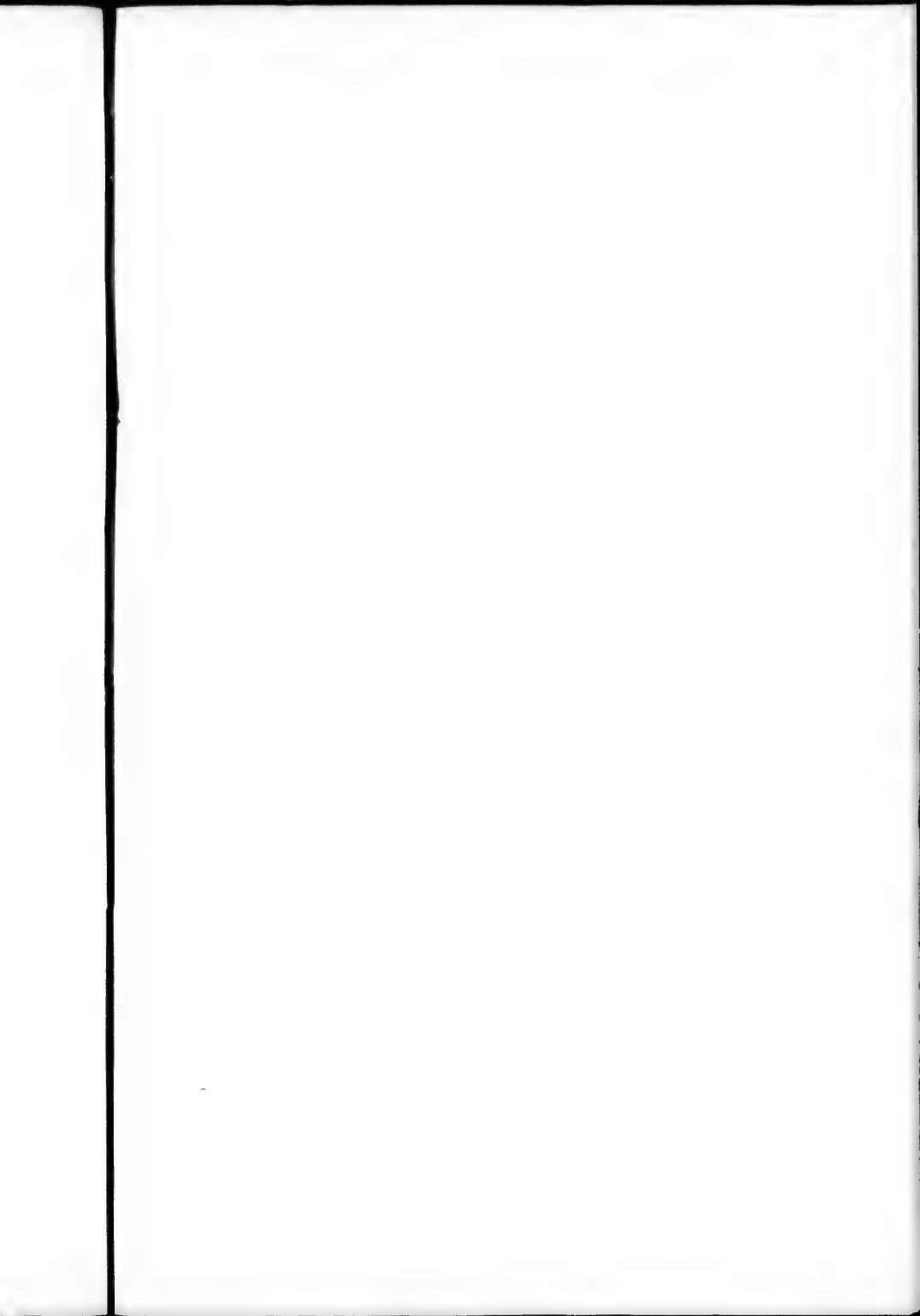
"3. That on the coast of *South America* and the adjacent islands *south* of the parts already occupied by Spain, no Settlement should thereafter be made either by British or Spanish subjects, but on both sides should be retained the liberty of landing, and of erecting temporary buildings for the purposes of the fishery. These rights were also, of course, enjoyed by the people of the United States."

It is to be observed that Mr. Adams proceeds to refer to these exclusive rights, and to the application of the law of nations, subsequently to the Treaty, to every portion of the American continents; and, wholly regardless of the ancient principle of colonial exclusiveness, he says:—

Ibid.

"The exclusive rights of Spain to any part of the American continents have ceased. That portion of the Convention, therefore, which recognizes the exclusive colonial rights of Spain on these continents, though confirmed as between Great Britain and Spain by the first Additional Article of the Treaty of the 5th July, 1814, *has been extinguished* by the fact of the independence of the South American nation and of Mexico. Those independent nations will possess the rights incident to that condition, and their territories will, of course, be subject to





no *exclusive* right of navigation in that vicinity, or of access to them by any foreign nation.

"A necessary consequence of this state of things will be that the American continents henceforth will no longer be subjects of colonization. Occupied by civilized, independent nations, they will be accessible to Europeans and to each other on that footing alone, and the Pacific Ocean in every part of it will remain open to the navigation of all nations, in like manner with the Atlantic."

It may be added that, agreeably to the views of Mr. Adams, the Conventions of 1824 and 1825 wholly exclude the ratification of the policy of colonial exclusion on any part of the American coast, with the exception of a provision by which the right of exclusion in colonial possessions was said to have been recognized so far as concerns trading within the ordinary territorial limits.

It is shown elsewhere in the British Counter-Case that the statement above (*f2*), to the effect that the privilege of trade was limited to the coast south and east of Yakutat Bay is incorrect. The privilege covers the whole of the Russian coast—in the case of the Treaty of 1825.

In the explanation of Russia to the United States as to the reason for the claim of 100 miles of exclusive coastal jurisdiction no reference to *seals* or to *fisheries* was made. On the contrary, M. Poletica wrote to Mr. Adams :—

"I shall be more succinct. Sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia, within the distance of at least 100 Italian miles. This measure, however severe it may at first view appear, is after all but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade, very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives of the Russian possessions in America, exciting them likewise in every manner to resistance and revolt against the authorities there established."

British Case,
Appendix, vol. ii.
Part II, p. 2

It is said the 100-mile limit enabled the Russians to protect the "herd" while on the islands.

United States'
Case, p. 41.

Mr. H. W. Elliott, a special officer of the United States' Government, was of a contrary opinion in 1874. Reporting to the United States' Government, he said :—

"In regard to the numbers of the fur-seal when the Russians first took possession of the ground in 1787, the

Report of H. W. Elliott, Special Agent, Treasury Department, Ex. Doc. No. 83, 44th Cong., 1st Sess., pp. 119, 120.

present generation, descendants of these pioneers, have only a general vague impression that the seals were somewhat more numerous in the first days of Russian occupation than they are now.

"With regard to the probable truth of the foregoing statement of the natives to us, I can only call attention to the fact that the entire sum of seal life, as given by them, is 4,100 of all classes; now, Bishop Veniaminov publishes an authentic record of the killing on these islands from 1817 to 1837 (the time in which he finished his work), by which it will be seen that in this year of 1835, 4,052 seals were killed and taken; and if the account of the natives was true, that would leave on the island only 50 for 1836, in which year, however, 4,040 were killed, and in 1837 4,220, and there was a steady increase in the killing by the Russians up to 1850, when they governed their catch by the market alone.

"This great diminution of the seal life, setting in at 1817 and running on steadily in decline until 1834, when it began to mend, is well accounted for by Veniaminov's account. From this it will be seen that after greedy Russian Companies on these islands had killed seals for over fifteen years in unknown numbers without causing any great change in the ratio of numbers, a diminution began gradually to set in, which became obvious in 1817, and attained its maximum in 1834-35, when hardly a tithe of the former numbers appeared on the ground."

The United States' Case refers continually to the "Pribyloff herd," as though the seals resorting to these islands were so known and distinguished.

This, however, is a novel term, and is introduced for the purposes of this Case.

It does not occur in the Russian correspondence nor in the United States' legislation.

In the United States' documents the seals are referred to as "seal fisheries in Alaska."

The legislation of the United States on this subject is in point. Witness the following:—

Letter of Secretary of Treasury, 44th Cong., 1st Sess., H. R., Ex. Doc. No. 83. So also at pp. 52 and 70, ditto.

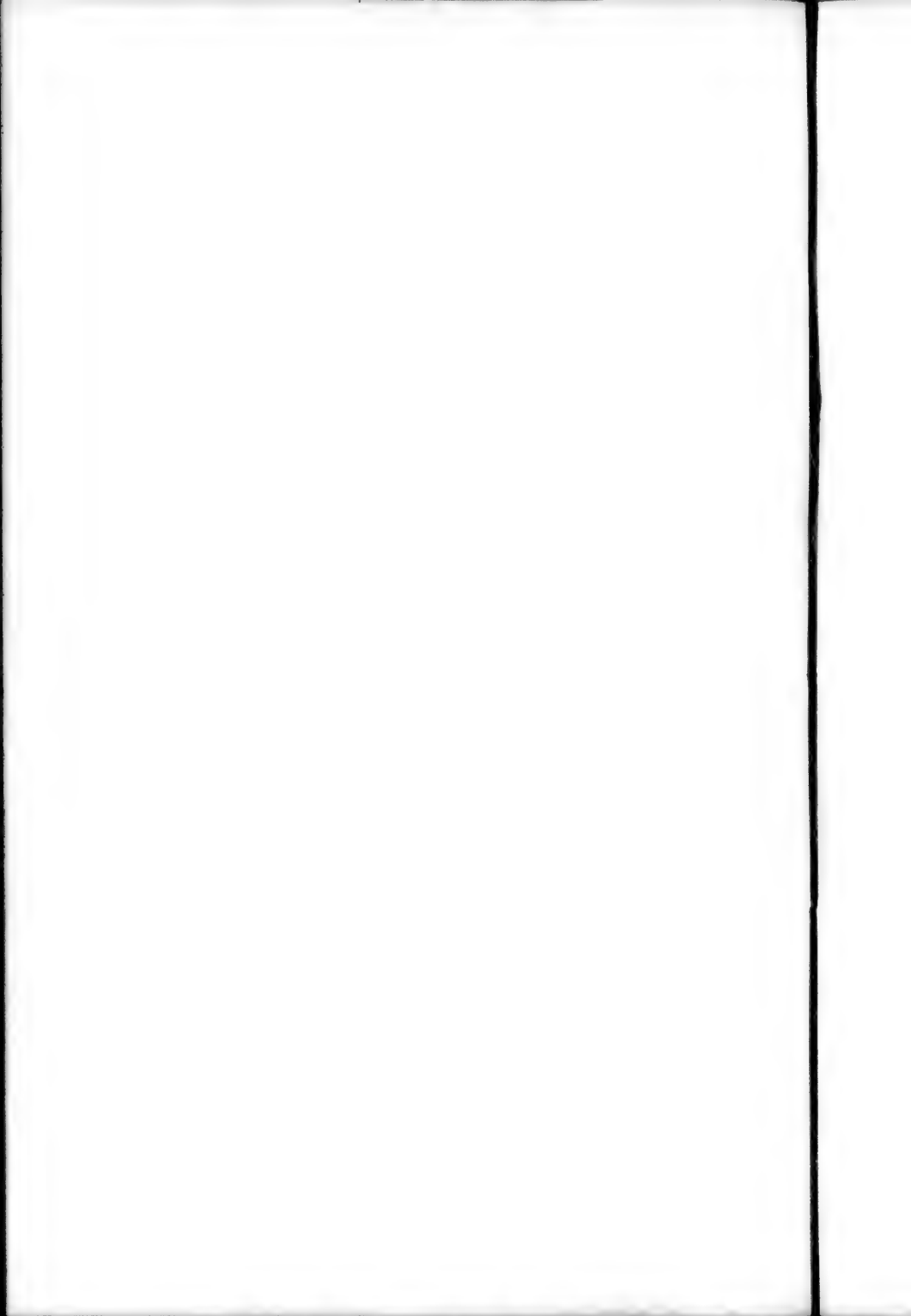
Alaskan Seal Fisheries

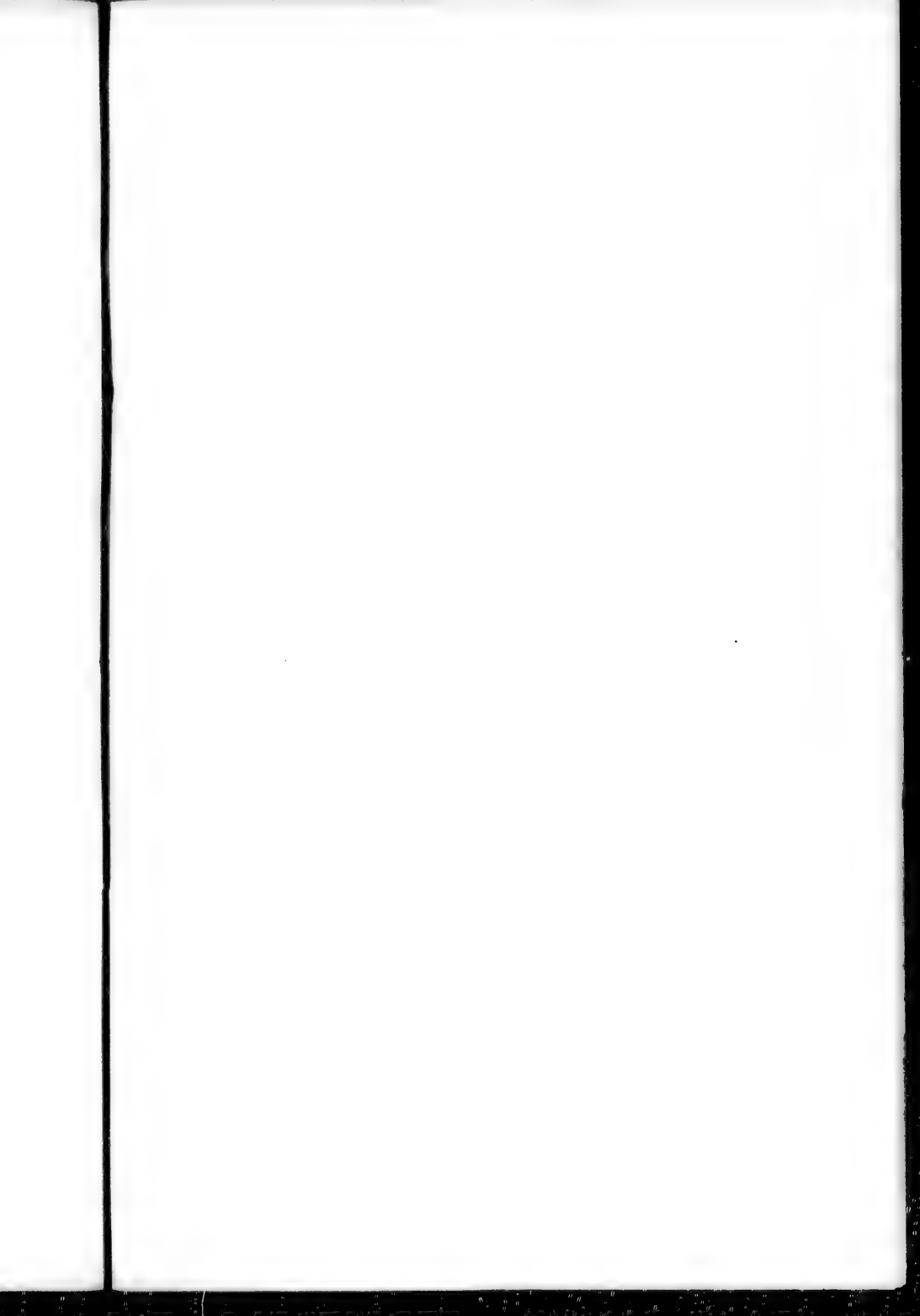
United States' Statutes at large, December 1887 to March 1889, vol. xiv, p. 957. 50th Cong., 2nd Sess.

"For salaries and travelling expenses of agents at seal fisheries in Alaska, as follows: For one agent, 3,650 dollars; one assistant agent, 2,920 dollars; two assistant agents at 2,190 dollars each; necessary travelling expenses of agents actually incurred in going to and returning from Alaska, not to exceed 600 dollars each per annum; in all 13,350 dollars."

51st Cong., 1st Sess., H. R., No. 7903.

So in the Bill of the 7th March, 1890, and the Act founded upon it, whereby Mr. Elliott was





appointed a Special Agent to inquire into the subject.

So also in the letter of the Secretary of the 52nd Cong.,
1st Sess., Ex. Doc.
No. 73.
Treasury in reference to Senate Resolution of the
28th March, 1892.

(G.)

British Case,
Chap. IV, p. 77
et seq

The British Case supplies the evidence of continuous use of the very waters to which the language of Ukase of 1821 applied during the period between the Treaties and the Cession of Alaska.

Notwithstanding the general ignorance prevailing at this time among the nations touching the waters and coasts of Behring Sea, notwithstanding that discoverers and explorers chiefly were traversing those waters, the record in the British Case shows that from Behring Strait to the southernmost limits covered by the Ukase were used between 1824 and 1867 by the ships of various nations without molestation.

Ibid., p. 77

Ibid., p. 78.

The British vessel "Blossom" in 1826 sailed through Behring Sea and Strait.

Ibid., p. 83.

In 1840 foreign whalers were followed to Behring Sea, and their appearance was reported to the Russian Government, who, in turn, reported their presence to the number of fifty in 1841.

Ibid., pp. 83, 84.

In 1842 he asked authority to drive them out and to preserve the sea as exclusively Russian; but he was informed by the Minister of Foreign Affairs for Russia that the Treaty of 1824 prevented this.

Ibid., p. 85.

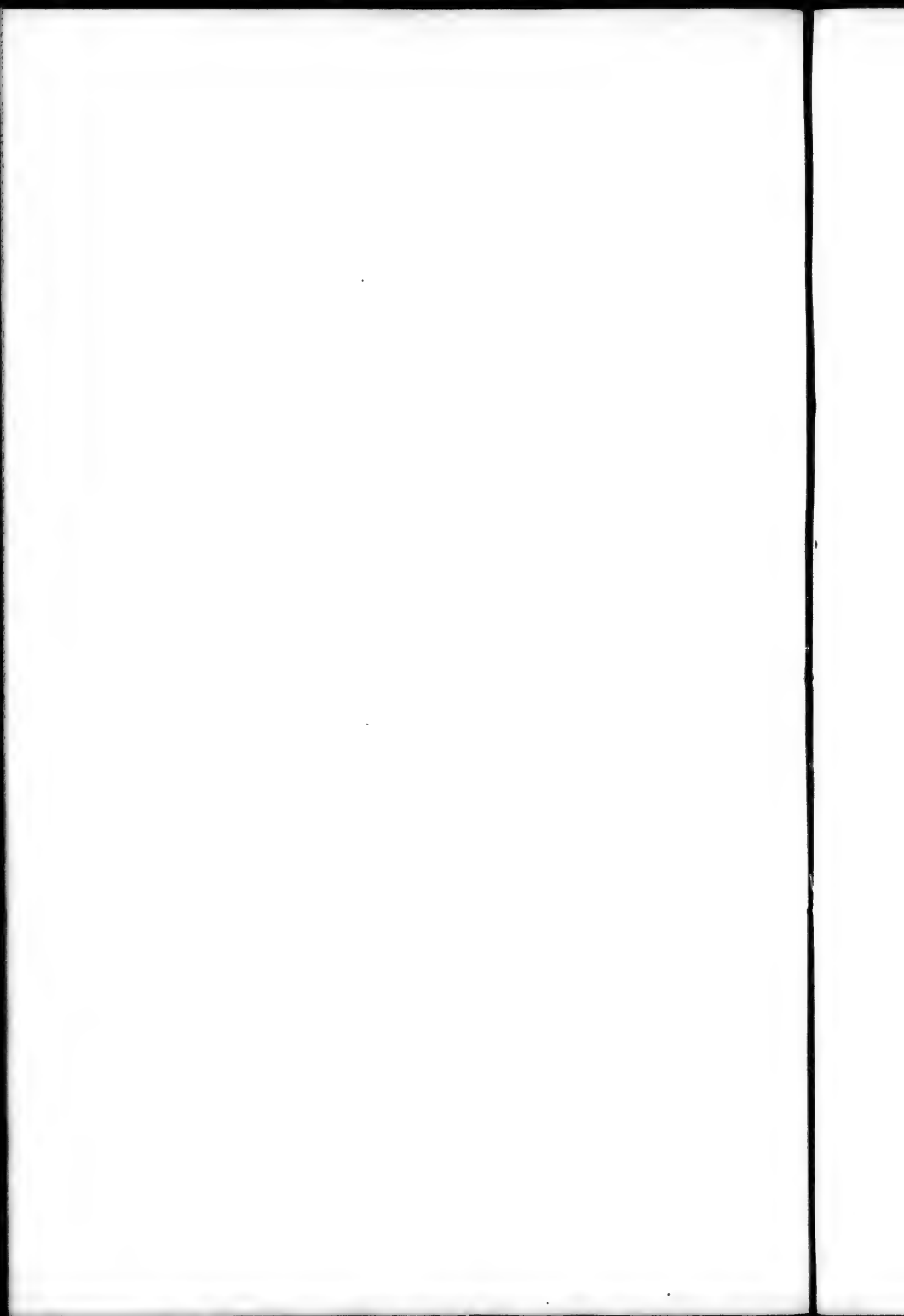
It is shown in the British Case that the efforts of the Russian Company to free themselves of this foreign competition failed because the Foreign Office concluded that Russia had no right—

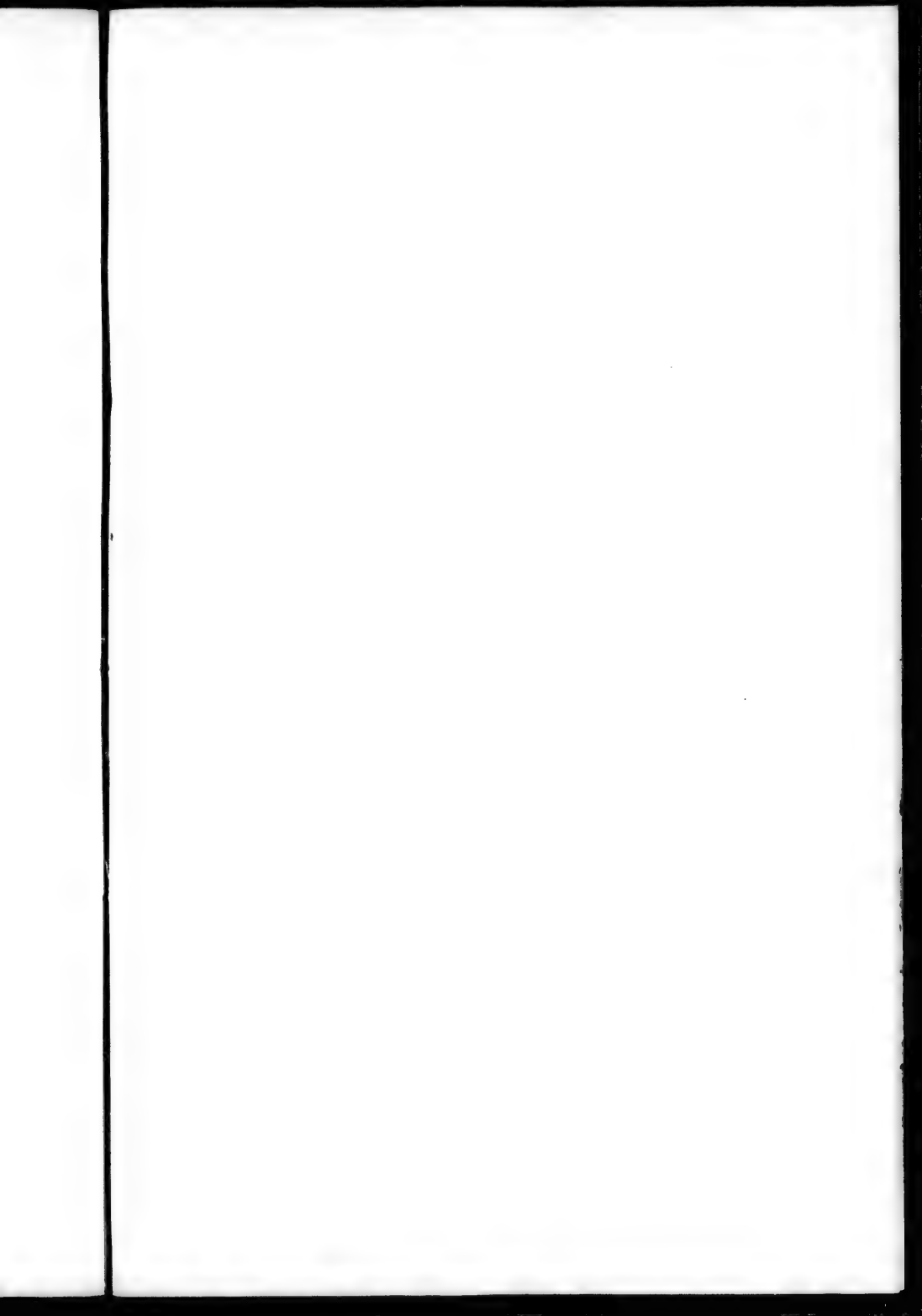
"to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition of allowing them to take whales."

In 1888 Mr. C. A. Williams testified as follows before the Committee of Merchant Marine and Fisheries at Washington:—

"Fur-seal Fisheries
of Alaska."
Washington, 1889.
pp. 92, 93.

"Q. Was Russia, to your knowledge, in the habit of granting permission to vessels to visit certain points on the coast of Behring Sea, or were they allowed to land without permission?—A. They were allowed to land on the northern coast without any permission. Above Norton Sound the shores on either side are touched at by whaler and traders without permission."





On the freedom of the seas and the uninterrupted enjoyment of these waters by whalers, Tikhmenieff says:—

"M. Etolin accordingly resolved once more to ask the Company to furnish him with more definite instructions in regard to the whalers, *i.e.*, to define the rights of the Governor of the Colony with reference to those captains who, in spite of the prohibition, should enter the bays, harbours, and gulfs of the Russian possessions, or land on the islands. While awaiting a decision in the matter, he resolved to arm one of the ships of the colonial flotilla to act as a cruiser in the waters most infested by the foreign vessels. The cruiser was ordered to avoid most carefully anything which might give rise to a conflict, and to confine herself strictly to watching the whalers. She was on no account to resort to force unless it became necessary to resist an attack. Apart from this measure, M. Etolin suggested the expediency of obtaining the permission of the Government for the colonial cruiser to fly the flag of the Imperial navy, as that flag would, in certain eventualities, inspire more respect. Finally, he considered that the claim of foreigners to take whales ought certainly to be limited to a line drawn at a distance of at least 3 leagues, or 9 Italian miles, from the shore of the Colony. As an example of the justice of fixing such a limit, and of the advantages to be obtained therefrom, he adduced New Holland and other British possessions, where no whaler would dare to take whales within the 3-league limit.

British Case,
Appendix, vol. i,
pp. 41, 42.

"Unfortunately these efforts to defend the rights of the Company were not attended with more success than those previously made. Although the Foreign Office, at the request of the Company, informed the Government of the United States of the establishment of cruisers in the Russian Colonies, for the purpose of insuring the observation of the Convention of 1824 by foreign ships, no decision was arrived at in regard to the fixing of a limit for whaling, or with reference to the proposal that the Company's cruiser should fly the flag of the Imperial navy. On the other hand, the Government took occasion to impress upon the Company the importance of great caution being observed by the colonial cruisers in all that concerned foreign ships.

"The exact words of the letter from the Foreign Office are as follows: 'The fixing of a line at sea, within which foreign vessels should be prohibited from whaling off our shores, would not be in accordance with the spirit of the Convention of 1824, and would be contrary to the provisions of our Convention of 1825 with Great Britain. Moreover, the adoption of such a measure, without preliminary negotiation and arrangement with the other Powers, might lead to protests, since no clear and uniform agreement has yet been arrived at among nations in regard to the limit of jurisdiction at sea.'

"In 1847 a representation from Governor Tebenkoff, in regard to new aggressions on the part of the whalers, gave rise to further correspondence. Some time before, in

June 1846, the Governor-General of Eastern Siberia had expressed his opinion that, in order to limit the whaling operations of foreigners, it would be fair to forbid them to come within 40 Italian miles of our shores, the ports of Petropavlovsk and Okhotsk to be excluded, and a payment of 100 silver roubles to be demanded at those ports from every vessel for the right of whaling. He recommended that a ship of war should be employed as a cruiser to watch foreign vessels. The Foreign Office expressly stated as follows in reply: 'We have no right to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales.' The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon-shot, that is, about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognized by the other Powers. They were confident that the fitting out of colonial cruisers would put an end to all difficulties; there had not yet been time to test the efficacy of this measure.

"(Soon after this the whalers began to turn their chief attention to the Sea of Okhotsk.)

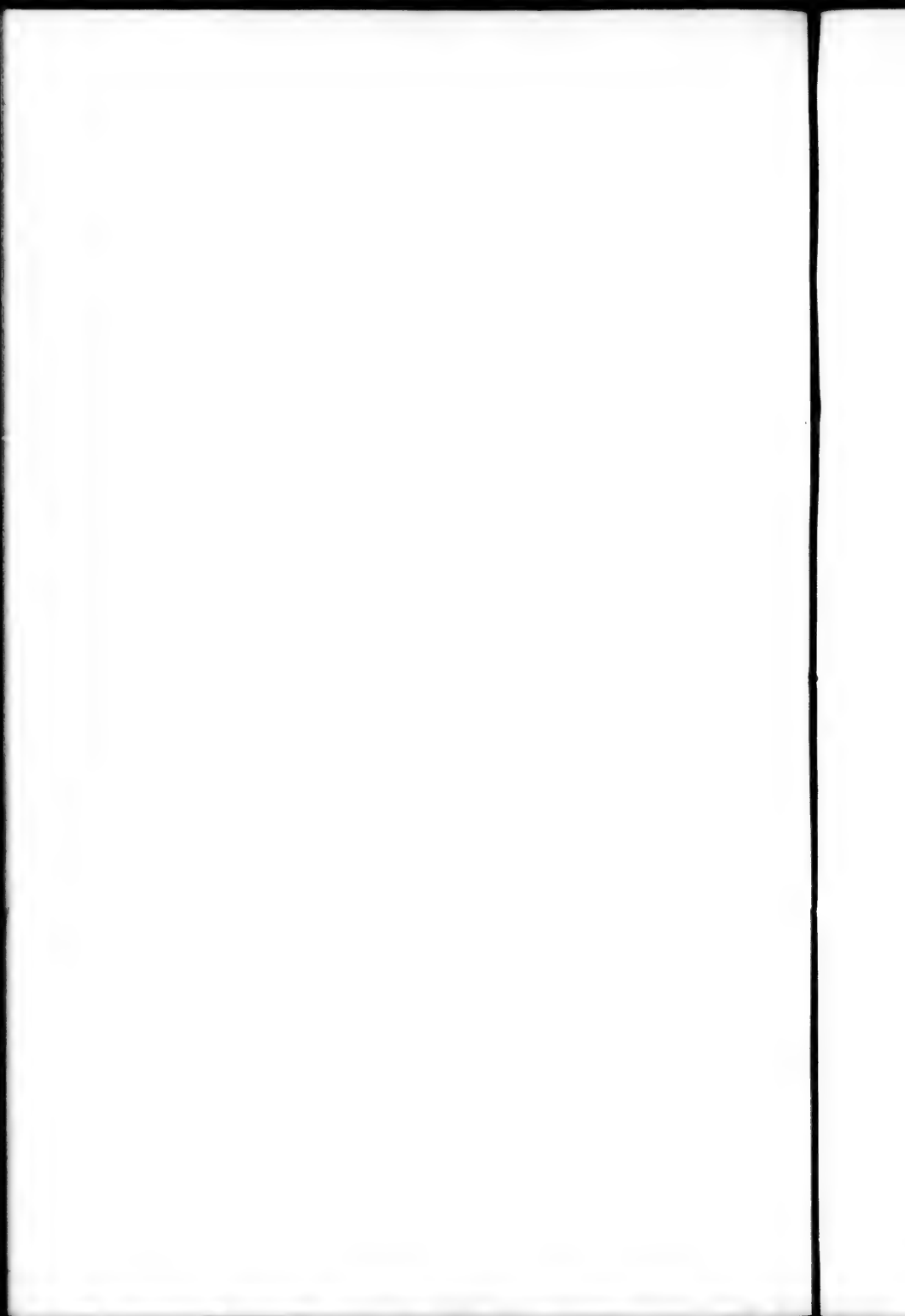
"In 1850 the corvette 'Olivusta,' of the Russian navy, was sent by the Government to cruise in the Northern Pacific. The Company were invited to offer suggestions with regard to the instructions to be given to cruisers.

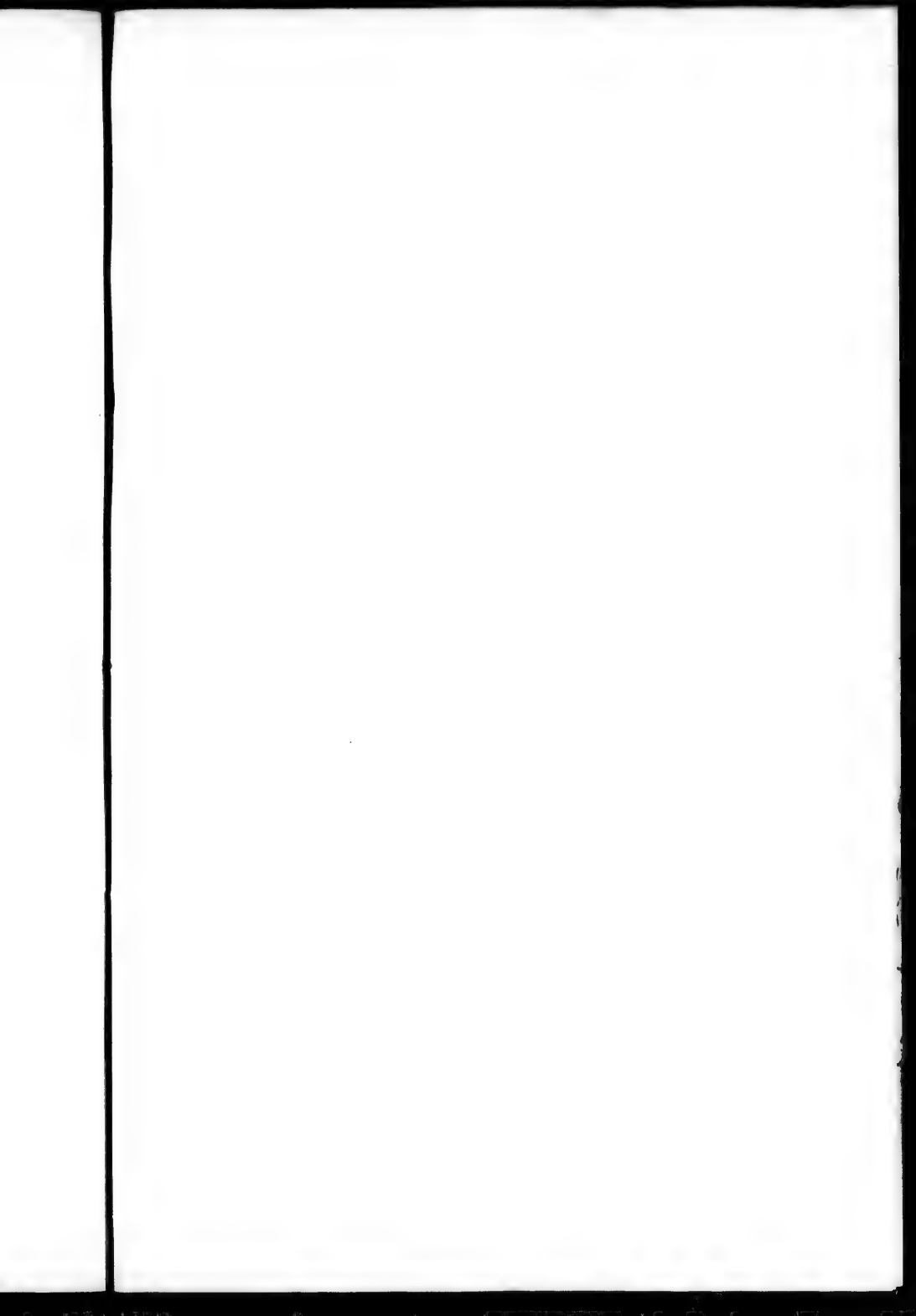
"The following is an extract from their suggestions:—

"In order to prevent the complete extermination of the whales in the Sea of Okhotsk it is most desirable that an armed cruiser should always be stationed at the Shantar Islands to keep away foreign whalers, at all events until it is found possible altogether to prohibit whaling by foreign ships in that sea.' (16th November, 1853, No. 970, Dielo Arkh. Kom. 1842, goda, No. 14, str. 181.)

"Some time before the Company had written to the Foreign Office (22nd March, 1853, No. 368, the same Dielo, p. 163): 'If it is found impracticable entirely to prohibit for a time fishing by foreigners in the Sea of Okhotsk, as an inland sea, would it not, at any rate, be possibly officially to prohibit whalers from coming close to our shores and whaling in the bays and among the islands, detaching one of the cruisers of the Kamchatka flotilla for this service?'

"The instructions to cruisers were approved on the 9th December, 1853. The cruisers were to see that no whalers entered the bays or gulfs or came within 3 Italian miles of our shores, that is, the shores of Russian America (north of 54° 41'), the Peninsula of Kamchatka, Siberia, the Kadjak Archipelago, the Aleutian Islands, the Pribyloff and Commander Islands, and the others in Behring Sea, the Kuriles, Sakhalin, the Shantar Islands, and the others in the Sea of Okhotsk to the north of 46° 30' north. The





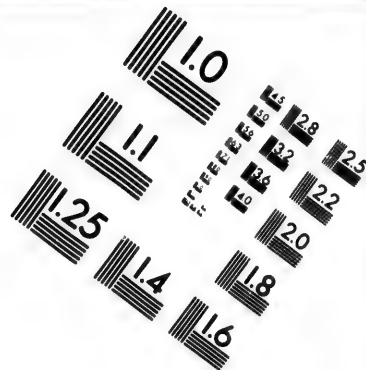
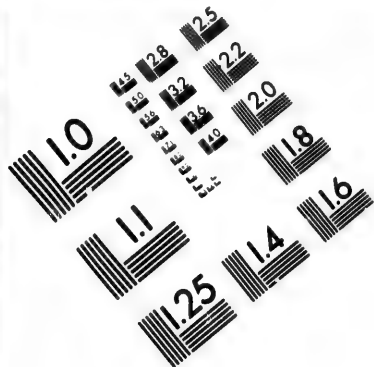
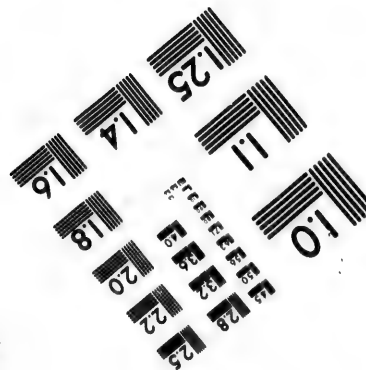
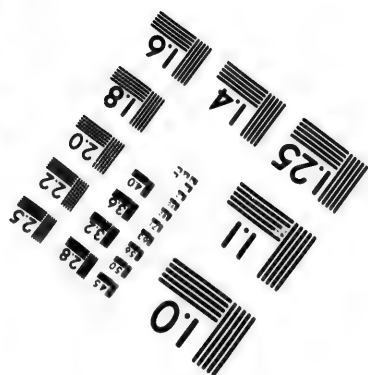
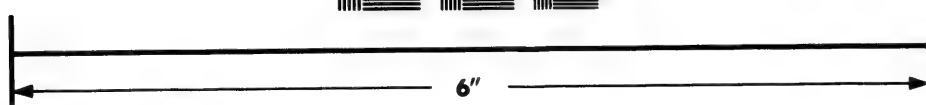
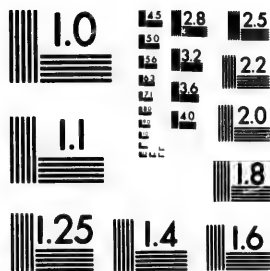


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cruizers were instructed constantly to keep in view that 'our Government not only does not wish to prohibit or put obstacles in the way of whaling by foreigners in the northern part of the Pacific Ocean, but allows foreigners to take whales in the Sea of Okhotsk, which, as stated in these instructions, is from its geographical position a *Russian inland sea*."

Whalers by no means confined their operations to whaling. Tikhmenieff recounts that—

" . . . Traffic in furs was openly carried on between the natives and the American captains, and when the Colonial authorities made some whalers leave Novo Archangelsk on that account, they quietly continued the traffic in the Bay of Sitka and disregarded all protests. The following case also deserves to be noticed: In 1847 one of the whalers came to Behring Island, and on the captain being told that he must not traffic in seal-skins on a neighbouring small island, he ordered the overseer of the island to be turned off his ship, and immediately went on shore with his men, with the evident intention of disregarding the prohibition. . . ."

British Case, Appendix, vol. i, p. 40.

The United States' Case, notwithstanding this record, insists:—

g (1). That after the date of the Treaties of 1824 and 1825, Russia, in fact, exercised the same control over the waters of Behring Sea as before.

United States' Case, p. 61.

g (2). That after said Treaty of 1825 the Russian Government continued to exercise exclusive jurisdiction over the whole of Behring Sea up to the time of the cession of Alaska to the United States, in so far as was necessary to preserve to the Russian-American Company the monopoly of the fur-seal industry, and to prohibit the taking on the land or in the water, by any other persons or Companies, of the fur-seals resorting to the Pribyloff Islands.

Ibid., p. 69.

g (3). That before and after the Treaty of 1825, and up to the date of the cession of Alaska to the United States, British subjects and British vessels were prohibited from entering Behring Sea to hunt for seals, and that it does not appear that the British Government ever protested against the enforcement of this prohibition.

g (4) By the orders and authority of the Imperial Government, foreign vessels were prohibited from hunting seals in any part of Behring Sea, or in the passes of the Aleutian Islands, and that, for the enforcement of this prohibition, cruizers were employed in patrolling that sea so long as it remained Russian territory.

Ibid., p. 73.

To establish the fact of Russian control,

documents containing instructions only are referred to.

No action or assertion of extraordinary authority is mentioned.

It is proposed now to examine the various documents upon which the above assertions are based.

United States' Case, p. 61.

The confirmation of the Charter of the Russian-American Company in 1821, and a letter of the Company's Board, dated the 31st March, 1840, are cited.

The confirmation of the Charter in no way supports the statement which is based upon this fact.

Neither the Charter nor any act under it indicated the existence of a claim to exclusive control over Behring Sea or over the fur-seal or other industry in the deep waters.

Ibid., p. 62.

The letter of the 31st March, 1840, set out in the United States' Case, was in reply to a special question touching the fur-seal management.

It referred solely to the relative importance of the industries.

The United States' translation differs from that of the British.

The two are as follows:—

[See Mr. Fairholme's Translation, p. 20.]

Ibid., pp. 62, 63.

A letter of the 20th March, 1853, is mentioned. A further examination of it, even as translated in the United States' Case, discloses a positive admission of the right of whalers in Behring Sea.

It, in fact, instructs the officers to watch and warn them when in "districts surrounding the Pribyloff and Commander Islands."

It wholly omits to refer to "Behring Sea" in the sense suggested in the alleged Report of the 4th September, 1821.

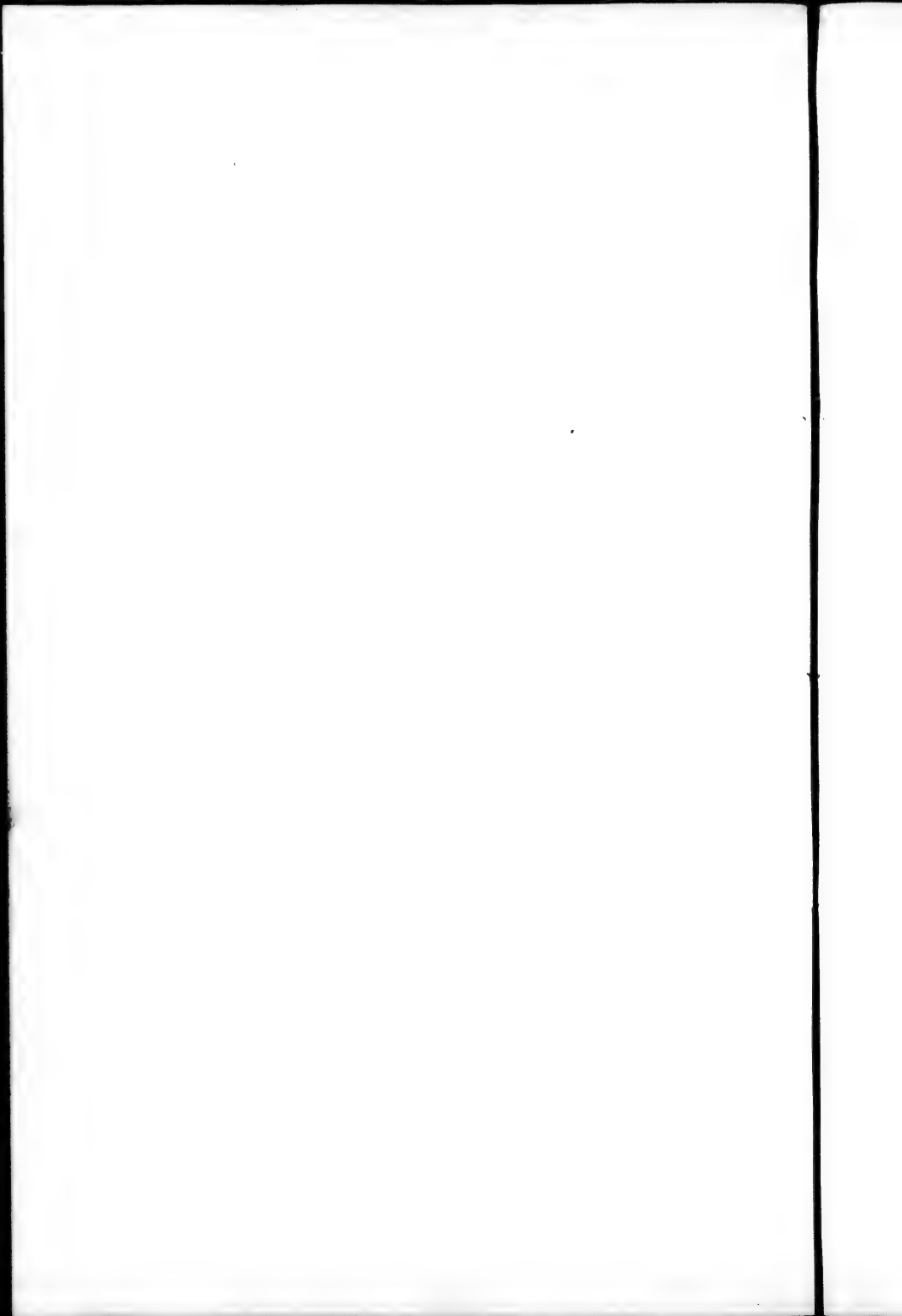
Ibid., Appendix, vol. i, p. 73.

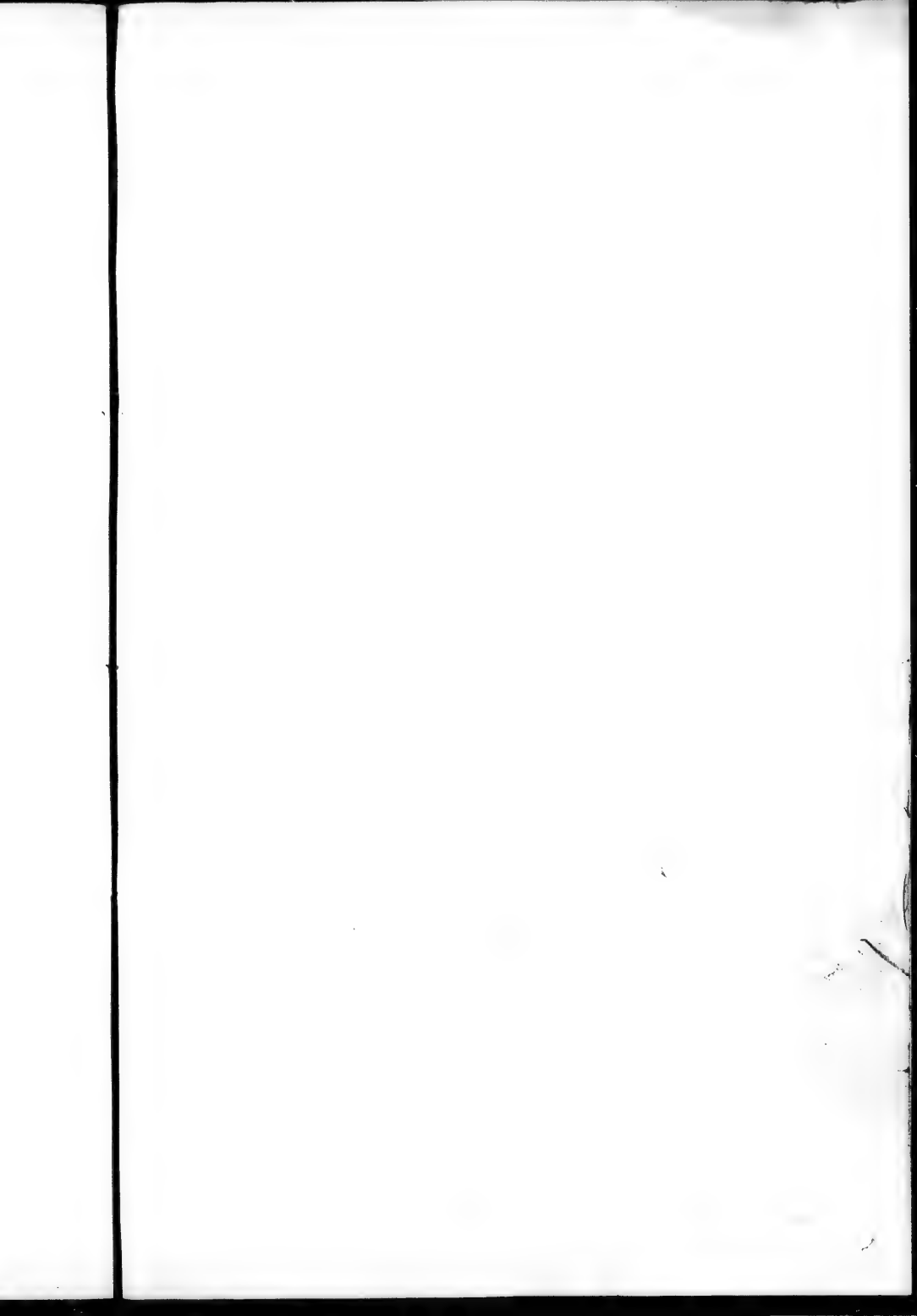
In paragraph 2 of the letter from the Board of Administration the instructions state:—

"On the outward voyage the course of this vessel should be laid to the northward of the chain of the Aleutian Islands, in order to meet foreign ships entering Behring Sea, and to warn them against cruising in pursuit of whales in the vicinity of the seal islands of the Pribyloff and Commander groups."

In paragraph 3 of this communication it is said:—

"The conclusion of this cruising voyage depends upon the time at which the foreign whale ships leave Behring Sea,





which is probably at the end of August or the beginning of September."

The United States' translation of extracts given in the Case, and the British translation, are here compared :—

[See Mr. Fairholme's Translation, p. 23.]

Again, a further extract is relied on.
It is not found in the British translation.
The two paragraphs are as follows :—

United States'
Case, p. 63.

[See Mr. Fairholme's Translation, p. 21.]

And the United States' Case pretends to quote further touching a protective scheme, and the translations are again at variance :—

[See Mr. Fairholme's Translation, pp. 21-23.]

It is evident from the United States' Case that the Russian-American Company were engaged at this time in whaling. If the foreign whalers were there without molestation and competing with the Russian Company, it may be asked what language of the Ukase, Charter, or Treaties excepts whaling, while prohibiting sealing or other hunting.

Ibid., p. 63.

Whaling was admittedly free outside of the ordinary territorial waters in or out of Behring Sea. All other hunting and fishing was certainly as free in the absence of special stipulations to the contrary.

While a prohibitory service was clearly outlined in the instructions as translated in the United States' Case, it is remarkable that no instance is given of a warning to whalers or hunters.

Ibid., pp. 63, 64.

It is to be presumed that the Russian archives (only partly produced in the United States' Case) contain no record of an actual warning in the sense suggested.

The letter of instructions to the Chief Manager of the 20th June, 1861, is plainly an indication of the care on the part of the authorities not to countenance any interference with hunters or traders, if out of the vicinity of the Russian territories. Paragraph 9 of this document is as follows :—

Ibid., Appendix,
vol. i, p. 74.

"9. It has come to my knowledge that in the present year two whaling vessels have sailed from San Francisco

United States'
Case, p. 67.

United States' Case, Appendix, vol. 1, p. 75.

for the purpose of trading on the Pribyloff Islands or of hunting in their vicinity. Consequently, I would suggest that, during your presence in those waters, you will exercise the duties of an armed cruiser to prevent any unlawful acts on the part not only of these two vessels, but of any others which you may find in Behring Sea."

The British translation again shows a material difference from that in the United States' Case.

Take paragraphs 5 and 9, and it is seen that no reference is made to Behring Sea in the British translation:—

[See Mr. Fairholme's Translation, p. 23.]

United States' Case, pp. 67, 68.

The prohibition of whaling in waters where other marine animals might be disturbed, which is referred to later on in the United States' Case, should be read in connection with and in the light of these instructions and documents. They make it more clear that the prohibition applied only to Russian ships when in the vicinity of the islands or Russian coasts.

It is, moreover, of importance to observe that the specific instructions do not refer to *foreign* whalers under this head.

Ibid., p. 67.

The Proclamation in 1864, as to trade in Russian territory and waters, which is referred to, is very vague and ambiguous. It appears in the Appendix without signature, and may possibly have been never more than a project. No evidence is given that it was issued or published.

The translation of this document also is challenged:—

[See Mr. Fairholme's Translation, p. 24.]

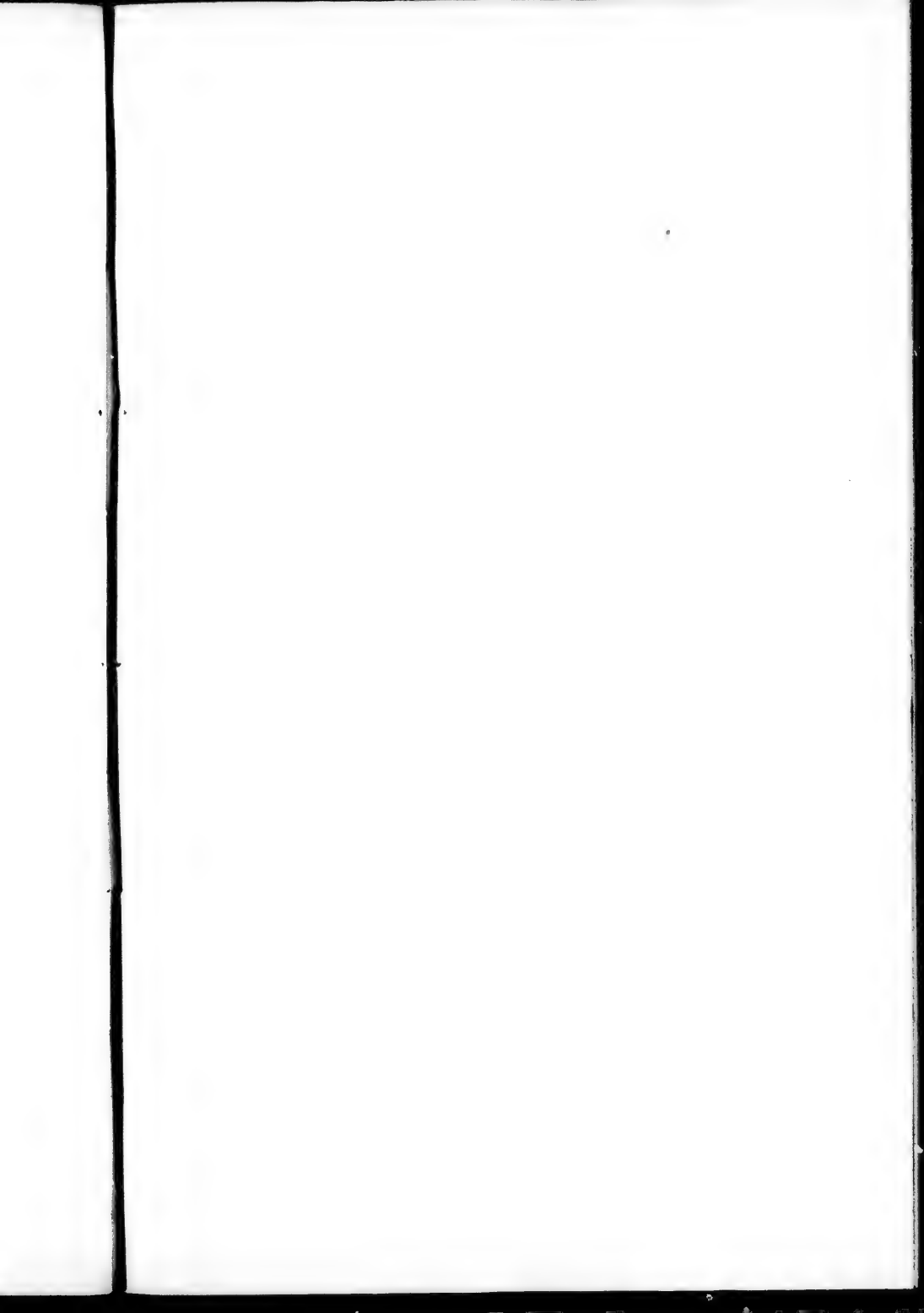
Ibid., p. 68.

The opinion of the Council of State in 1865, that exclusive rights should be given the Company to engage in the fur trade throughout the "whole colonial territory," deals with some suggestion which apparently had been made, that the eastern shores of Behring Sea should be opened up to the Russian fur trade generally. The full facts are not recounted.

The Council were of opinion that the "exclusive" privileges should be continued—as against Russians.

Ibid., Appendix, vol. 1, p. 77.

The limits defined in this opinion carefully exclude the waters of Behring Sea when referring to the privileges of the Company as against



other Russian subjects. The language used and that of the Ukase of 1821 and Charter under it on comparison are remarkable.

The context shows the suggested correction made in the foot-note to be erroneous. The whole passage is unsatisfactory.

United States' Case, Appendix, vol. i, p. 77.

(H.)

United States' Case, p. 70.

h (1). The Treaty (of 1807) which, prior to its consummation, had been discussed in the Senate of the United States and by the press, was an assertion by two great nations that Russia had heretofore claimed the ownership of Behring Sea, and that she had now ceded a portion of it to the United States; and to this assertion no objection is ever known to have been made.

h (2). That there was—

Ibid., p. 65.

"an understanding which existed in the United States at the time of the purchase and cession of Alaska as to the scope and effect of the jurisdiction exercised by Russia over the waters of Behring Sea, and the enhanced value which was thereby placed upon the fur-seal herd of the Pribyloff Islands."

It is denied in the British Case that Russia pretended to convey a title to that part of Behring Sea contained between what is called the line of demarcation (separating certain of the Aleutian chain of islands) and the mainland.

Neither did the Congress of the United States act on this assumption.

See British Case, p. 94.

The line of demarcation mentioned in this Treaty could not be used for the purposes mentioned in the United States' Case.

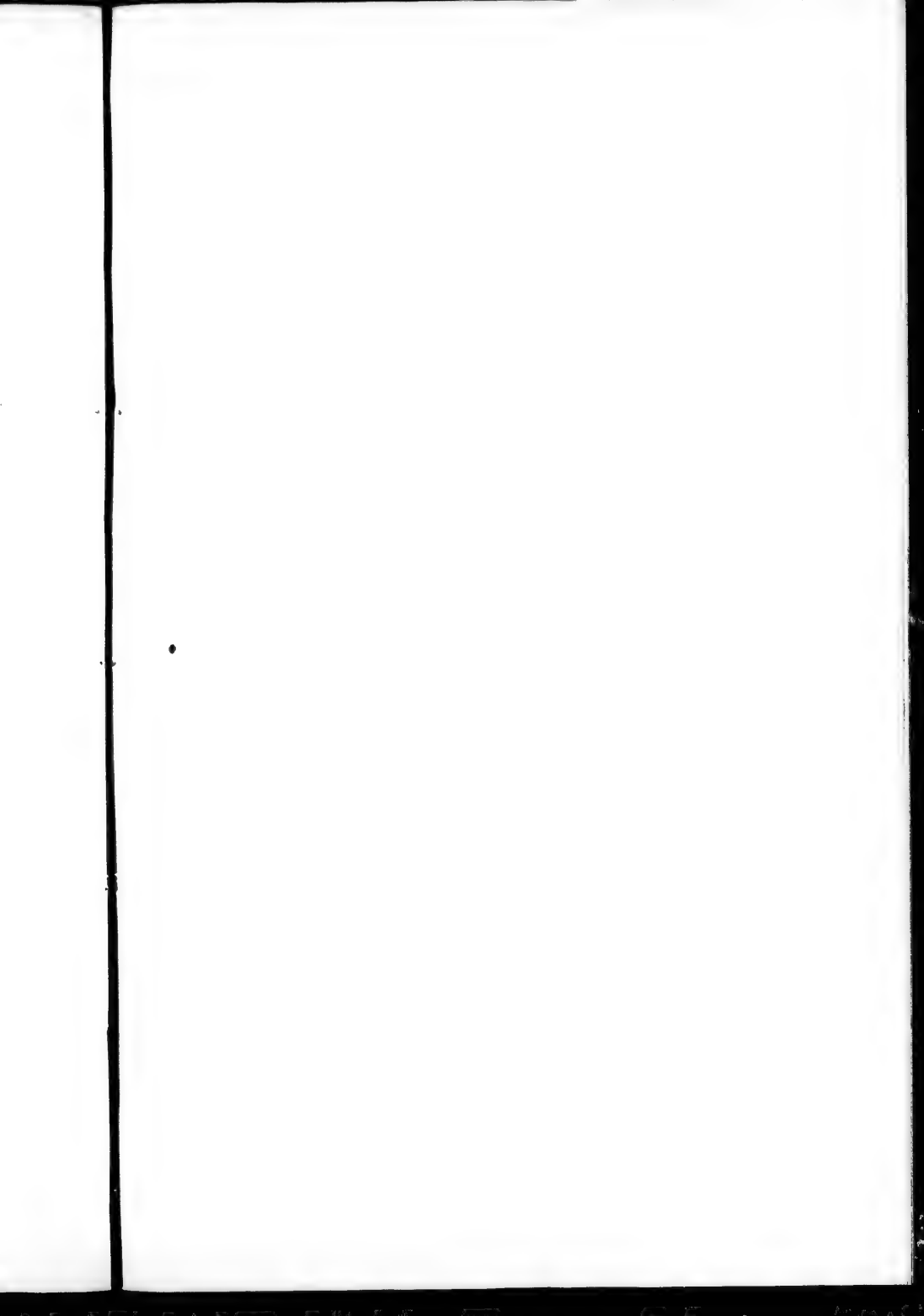
Her Britannic Majesty does not admit that Russian rights as to jurisdiction or the "sealeries" (so called in the United States' Case) in Behring Sea east of this boundary passed unimpaired to the United States by the Treaty of the 30th March, 1867.

Lord Salisbury, it is true, when discussing the points for reference, expressed his willingness to make this admission. When, however, the terms were finally agreed upon, it appears from the Convention as is the fact that the United States did not accept that admission and the terms which accompanied it. This subject was finally made a distinct question for the consideration of the Tribunal.

It is contended upon this in the British Case:—

1. That Russia had in 1867 no title east of this boundary outside of the continent and island with their ordinary territorial waters.

2. If a claim existed on the part of Russia in 1867 to extraordinary jurisdiction over the



sea, the language of the Treaty of Cession indicates the great care taken to avoid the suggestion of a transfer of such a claim.

3. That the claim originally depended for its support upon Russia owning both sides of Behring Sea. It could not be transferred without a transfer of the surrounding coasts, if at all.

The debates in Congress in 1867 and 1868 have not been examined in the United States' Case, though the United States cited legislation of an ambiguous character.

United States' Case, p. 78.

The British Case reproduces certain extracts from speeches of leading members of Congress when the acquisition of Alaska was under consideration.

British Case, p. 9.

They show that—so far from the Treaty constituting an assertion by two great nations of the ownership of Behring Sea—no one entertained the idea of the extent of this transfer now put forward.

Further references to these debates may be made under this head.

In the United States' House of Representatives, on the 11th December, 1867, on the subject of the purchase of Russian America, Mr. Washburn, of Wisconsin, said:—

" . . . I now desire to occupy the attention of the Committee upon a proposition that must soon come before the House for its action. I mean an appropriation to pay for Russian America. Immediately after the adjournment of Congress at the March Session, the President convened the Senate in Executive Session, and submitted a Treaty for the purchase of that country. With such secrecy had the Treaty been negotiated, that the whole country was taken by surprise when the announcement was made public. No man in the United States had asked for the negotiation of this Treaty, or that that country should be acquired. There was no public sentiment in favour of it, and not a single newspaper in the whole length and breadth of the land had ever advocated it. Yet, Sir, in the absence of all this and upon his own motion, the Secretary of State enters into a compact to pay the Government of Russia the sum of 7,200,000 dollars in gold for a tract of country—in regard to which he knew little or nothing—that we did not need, that nobody wanted, and, as far as known, was utterly worthless.

"Congressional Globe," Part I, 2nd Sess., 40th Cong., 1867-68, p. 135.

"When the Treaty came up for ratification in the other end of the Capitol, the strongest argument made in its favour was that as the Treaty had been negotiated, not to ratify it would subject us to the imputation of bad faith and trifling with the Czar of Russia, and justly give him offence. This will be the argument that will carry the appropriation through this House, if any shall do so. . . ."

In the United States' House of Representatives, on the 1st July, 1868, on the subject of the purchase of Alaska, the Honourable C. C. Washburn, of Wisconsin, said :—

"Congressional
Globe," Part V,
2nd Sess.,
40th Cong.,
1867-68, p. 392.

" . . . I shall attempt to demonstrate five propositions, and if I shall succeed in doing so, I think I may claim the judgment of this Committee and of the House. Those propositions are :—

"1. That the time this Treaty was negotiated not a soul in the whole United States asked for it.

"2. That it was secretly negotiated, and in a manner to prevent the representatives of the people from being heard.

"3. That by existing Treaties we possessed every right that is of any value to us without the responsibility and never ending expense of governing a nation of savages. . . ."

Ibid., p. 394.

" . . . Now I assert that, in 1859, Russia entered into a Treaty with Great Britain, and that we are entitled to the benefit of it under this compact between us and Russia. That there may be no mistake about it, I will read from the Treaty between Russia and Great Britain :—

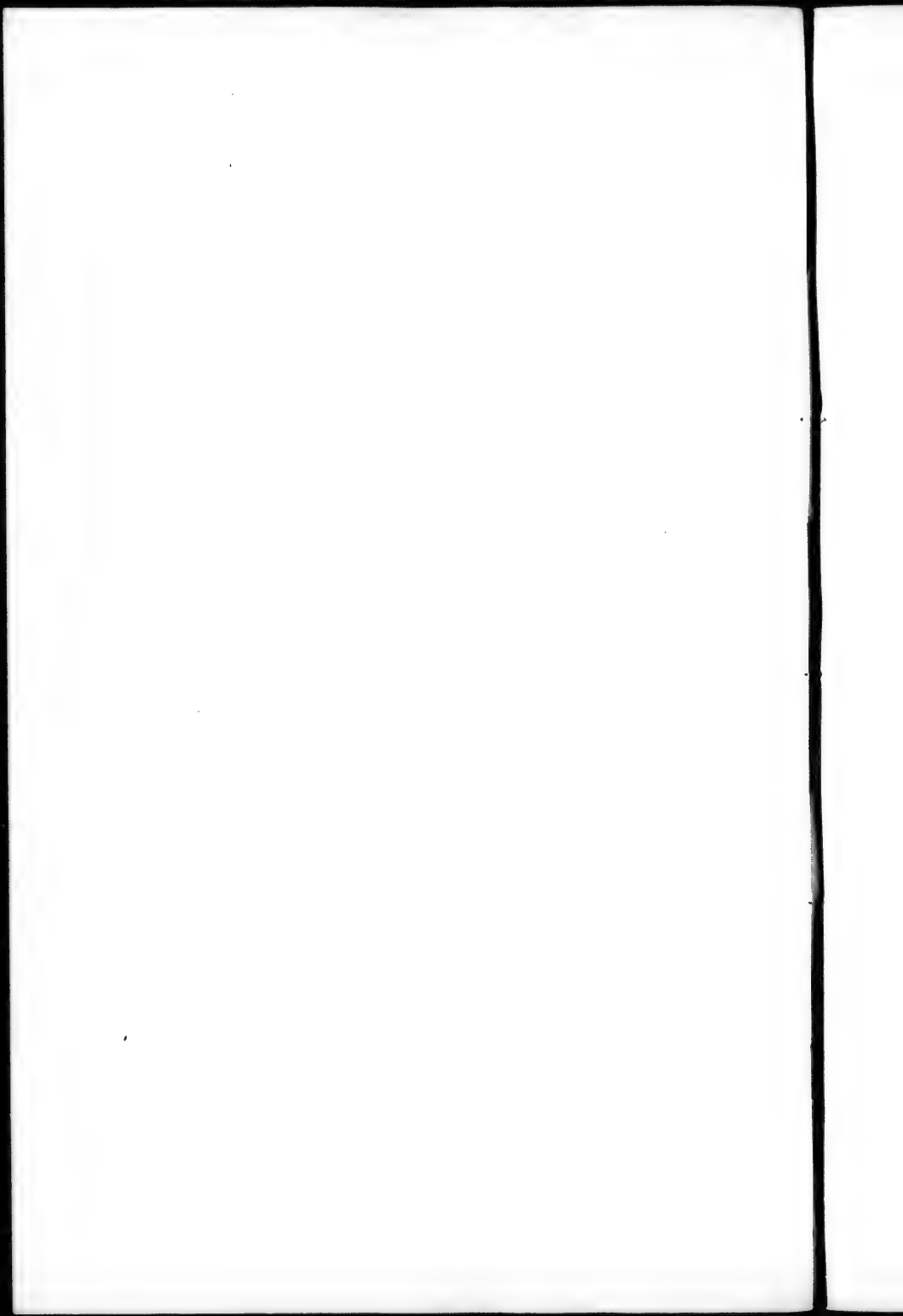
"VI. It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely and without any hindrance whatever all the rivers and streams which, in their course toward the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of this present Convention.

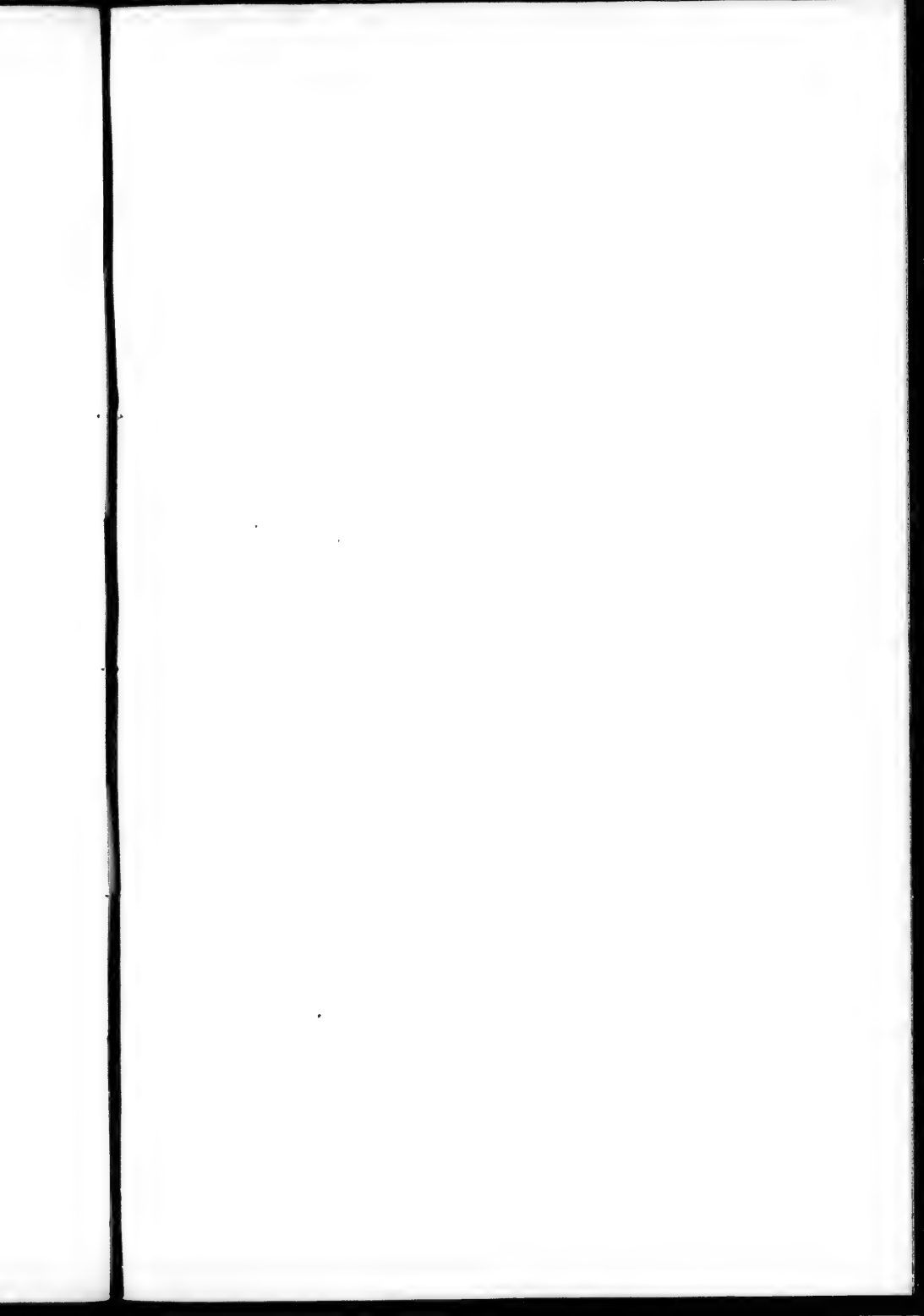
"VII. It is also understood that for the space of ten years from the signature of the present Convention the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III for the purpose of fishing and trading with the natives.

"VIII. The port of Sitka or Novo-Archangelsk shall be open to the commerce and vessels of British subjects from the space of ten years from the date of the exchange of the ratifications of the present Convention. In the event of an extension of this term of ten years being granted to any other Power, the like extension shall be granted also to Great Britain."

Ibid., p. 395.

"That Treaty was negotiated with Great Britain in 1859, and by our Treaty with Russia the same privileges inure to us. Then we already had this privilege without any expense whatever, and our fishermen have been in the habit of going there to fish every year. My friend from Massachusetts shows in his Report that in 1866, before this Treaty was made, there were not less than twenty-three vessels, 'ships, barks, brigs, and schooners,' up there engaged in fishing. . . .





"The sailors, traders, and fishermen of Great Britain have the right to-day to go into all the interior waters of Alaska under this Treaty; just the same right that our people have. Great Britain to-day has the same right on the coast of Alaska that we have, except the miserable privilege of governing the 50,000, 60,000, or 70,000 wretched savages there. And yet the gentleman comes in here and coolly asks us to vote 7,200,000 dollars in gold for this territory. . . ."

"He (Captain Howard) afterwards found one fishing bank, and its position was ascertained by Mr. Davidson; but I assert here that that fishing bank is not within the limits of the jurisdiction of Russian America. The gentleman from Massachusetts cannot point to a fishing bank on the coast of Russian America within the limits of the jurisdiction of Russia. I defy him to do it by any testimony. . . ."

In the United States' House of Representatives on the 14th March, 1868, speaking upon the subject of the purchase of Alaska, Mr. Washburn, of Wisconsin, said:—

" . . . But the climate of Walrussia is such that fish cannot be cured there. Hence it is of no consequence whether we have the right to land there or not. Without owning Walrussia we have the privilege of catching fish there, and going with the cargo wherever we please. . . ."

"Congressional
Globe," Part II,
2nd Sess.,
40th Cong.,
1867-68, p. 1875.

The following extract from the Report of the Congressional Committee ten years previous to the seizures in Behring Sea illustrates an absence of any intention to claim exceptional jurisdiction under the Treaty of Cession:—

" . . . By the Convention between the United States and Russia, concluded the 30th March, 1867, ratifications exchanged the 20th June, 1867, and proclaimed same day, the Government of Russia ceded to the United States all her possessions on the continent of America, and the islands adjacent thereto, for the equivalent of 7,200,000 dollars. The United States entered into immediate possession by military occupancy. This addition to our territory is known as Alaska. The two Islands of St. George and St. Paul, subsequently leased to the Alaska Commercial Company for seal catching, were a part of this possession. For many years preceding the cession of this territory to the United States, the Government of Russia had leased these to a Russian Company, called the Russian-American Company. . . ."

44th Cong.,
1st Sess., H. Report,
No. 623, p. 6.

The leading organs of public opinion in Washington, New York, and San Francisco, in the United States, have been examined from 1867 down to 1886 without an indication being found in any of them that it was supposed that

the Treaty of 1867 covered the deep waters of Behring Sea, while frequent references are made to the Treaty of Cession, the Alaska Commercial Company, and the fur-seal fisheries.

United States' Case, p. 78.

To establish the understanding on the part of the United States at the time of the purchase of Alaska, the jurisdiction of Russia over the waters of Behring Sea, and the exercise on the part of the United States since the purchase to protect the seals, the Case contains an examination of the "action of the United States relative to Alaska since the Cession."

British Case, pp. 124, 125.

To prove the contrary, the record for this period is examined in the British Case.

United States' Case p. 78.
British Case, pp. 104, 105.

The Act of the 27th July, 1868, is mentioned, but it is not stated, as is the case, that this Act, when dealing with the Seal Islands and Regulations for hunting there, refers to them as "to the waters adjacent thereto," a phrase hardly consistent with the theory now advanced as to ownership of the vast sea surrounding them.

Mr. Sumner's speech, however, is brought forward, to prove that the eastern half of Behring Sea was intended by the language of the Statute here referred to.

The passing reference to Mr. Sumner's speech, where he speaks of the delimitation of the Treaty of Cession and refers to "our part" of Behring Sea, is qualified subsequently by his statement based on the Treaties and history, that none of these seas were now *mare clausum*.

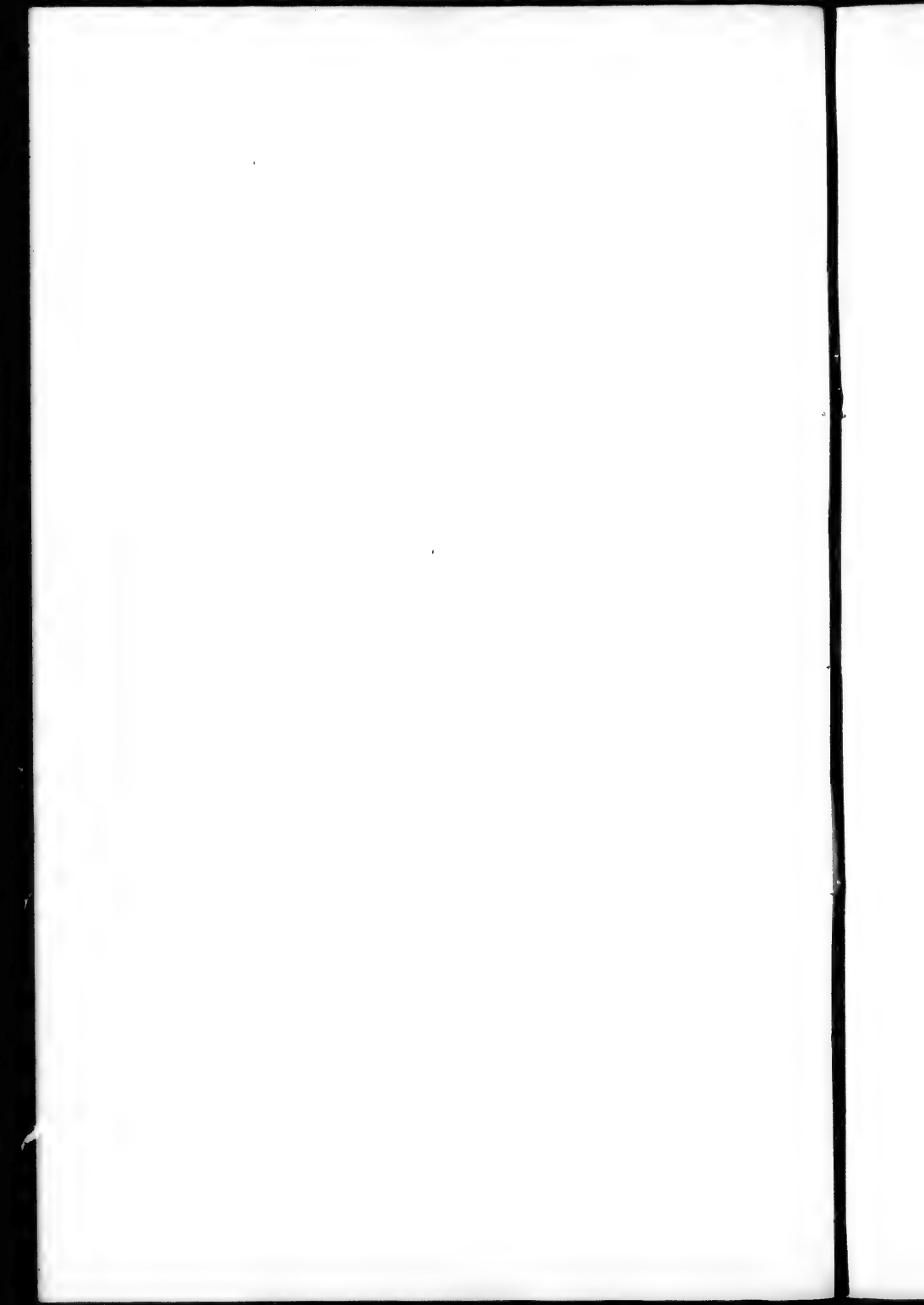
United States' Case p. 80.

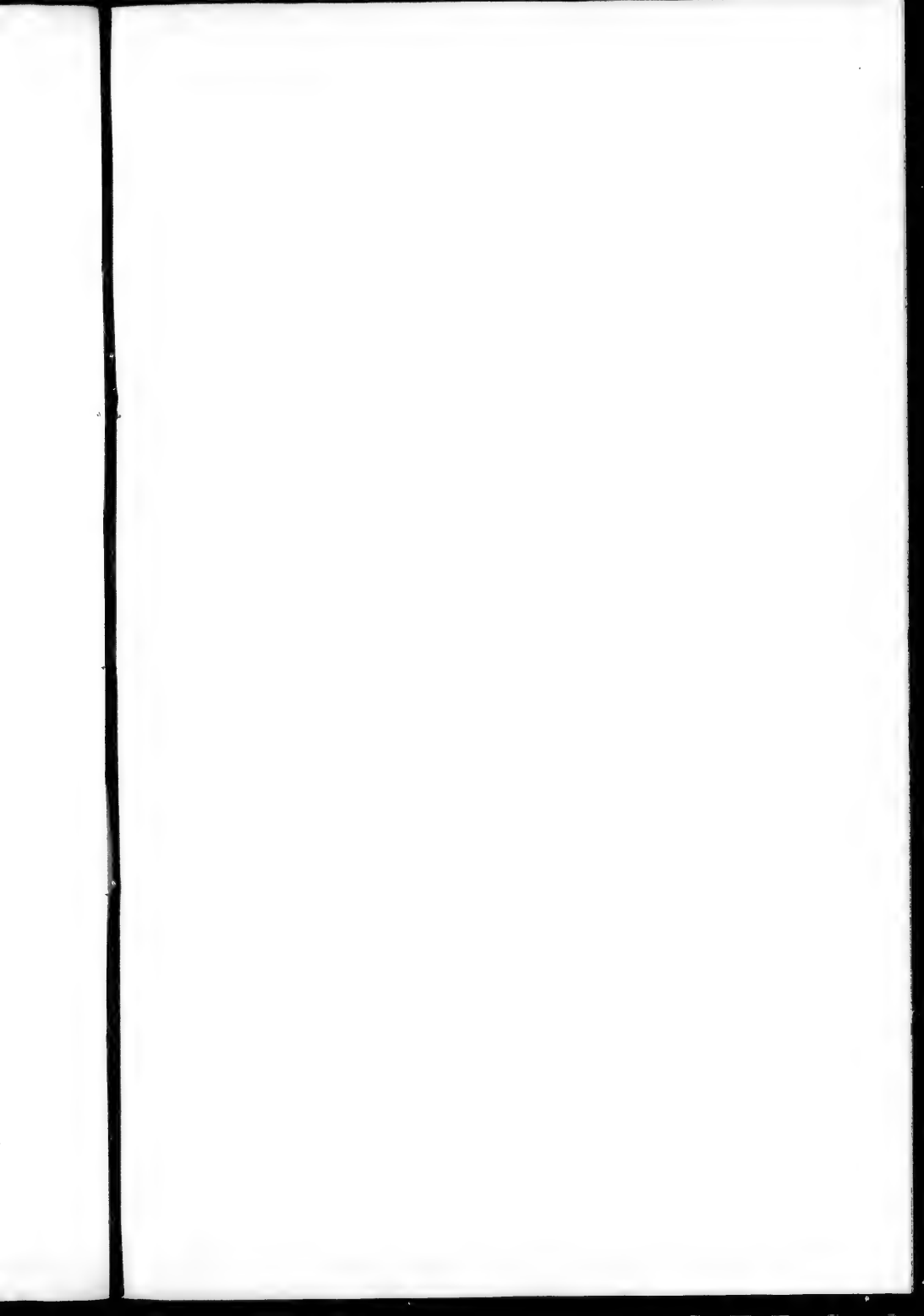
The argument, founded on the language of the Acts of the 3rd March, 1869, and 1st July, 1870, that the use of the term "in Alaska" signified that Behring Sea was considered by Congress as part of the territory of Alaska, is not sustained.

It might with equal force be said that a reference to the Magdalen Islands, in the Gulf of St. Lawrence, would not be covered by legislation referring to Canada, unless it were shown that the whole of the waters of the gulf were the territorial waters of Canada.

The action of the Executive branch of the United States' Government is alleged to have been uniformly to protect the sealing interests of the United States throughout that portion of the Behring Sea contained within the western boundary referred to in the Treaty of 1867. In support of this the letter from the Treasury Department, in March 1881, to Mr. Ancona, Collector of Customs at San Francisco, is cited,

Ibid.





together with a further letter of the 4th April, 1881.

Under this head, reference to the action of Congress in 1880, the President's Proclamation, the seizures of vessels, the *modus vivendi*, the action of the United States Courts, is also made.

These subjects are dealt with in the British Case.

The doctrine of *mare clausum*, or exclusive control over the sea, was repudiated by the United States previous to the execution of this Treaty.

Notwithstanding that this oft-repudiated doctrine is again set up in Part I of the United States' Case, it is not even now relied upon, since in Part II a theory is, for the first time in the history of nations, developed, which is in no way connected with the exclusive rights claimed in Part I.

The British Case reviews the various contentions of the United States since 1886 touching the subject of jurisdiction in this sea.

It is clear that, in the time of Russia, the only reason upon which special jurisdiction was set up over any of the waters of this sea was that of *mare clausum*.

The line of action adopted by the United States has been most vague and inconsistent.

When the seizures on the part of the United States in 1886 were made, the United States' Government was called upon for an explanation in September of that year. No information as to the grounds for the seizure was given until the 19th November following, when Mr. Bayard informed Sir L. Sackville-West, the British Minister at Washington, as follows:—

"It would be a complicated question of jurisdiction, for he had been informed that many of the seal-skins found on board British vessels were skins of seals which had been clubbed—not been shot—which would prove that a landing had been effected."

And on the 10th December Mr. Bayard stated to Sir L. West:—

"As to the nature of the jurisdiction over Behring Sea ceded by Russia to the United States in 1867," it "was a complicated question, but one that would be met in all fairness by the United States' Government."

On the 26th January, 1887, the vessels seized were released.

United States' Case, Appendix, vol. i, p. 102.
United States' Case, p. 81.

British Case :
Action of Congress, pp. 123-125 ;
President's Proclamation, p. 125 ;
seizures, pp. 121-123 ; *modus vivendi*, p. 122 ; action of Courts, pp. 127-129.

British Case, cap. vii, pp. 121-134.

United States' Case, Appendix, vol. iii, p. 26.

Sir L. West to Lord Idlesleigh, December 10, 1886.

United States' Case, Appendix, vol. i, p. 160.

On the 12th April, 1887, when inquiry had been made of the United States' Government as to the nature of their claim and of the instructions to their cruisers, Sir L. Sackville-West was informed by Mr. Bayard that—

"the question of instructions to Government vessels, in regard to preventing the indiscriminate killing of fur-seals, is now being considered, and I will inform you at the earliest day possible what has been decided; so British and other vessels visiting the waters in question can govern themselves accordingly."

No information of this decision has yet been given.

British Case,
pp. 111, 112.

Respecting the "Ancona" letter, the British Case shows that the ruling in this letter remained a dead letter. Pelagic sealing went on steadily and uninterruptedly from that time until 1886.

Ibid., p. 109.

It may also be remarked that in Mr. French's letter it does not definitely appear whether he referred to foreign vessels.

No allusion is made to the "Boutwell" correspondence of 1872, which is inconsistent with the present contention of the United States.

Ibid., p. 107.

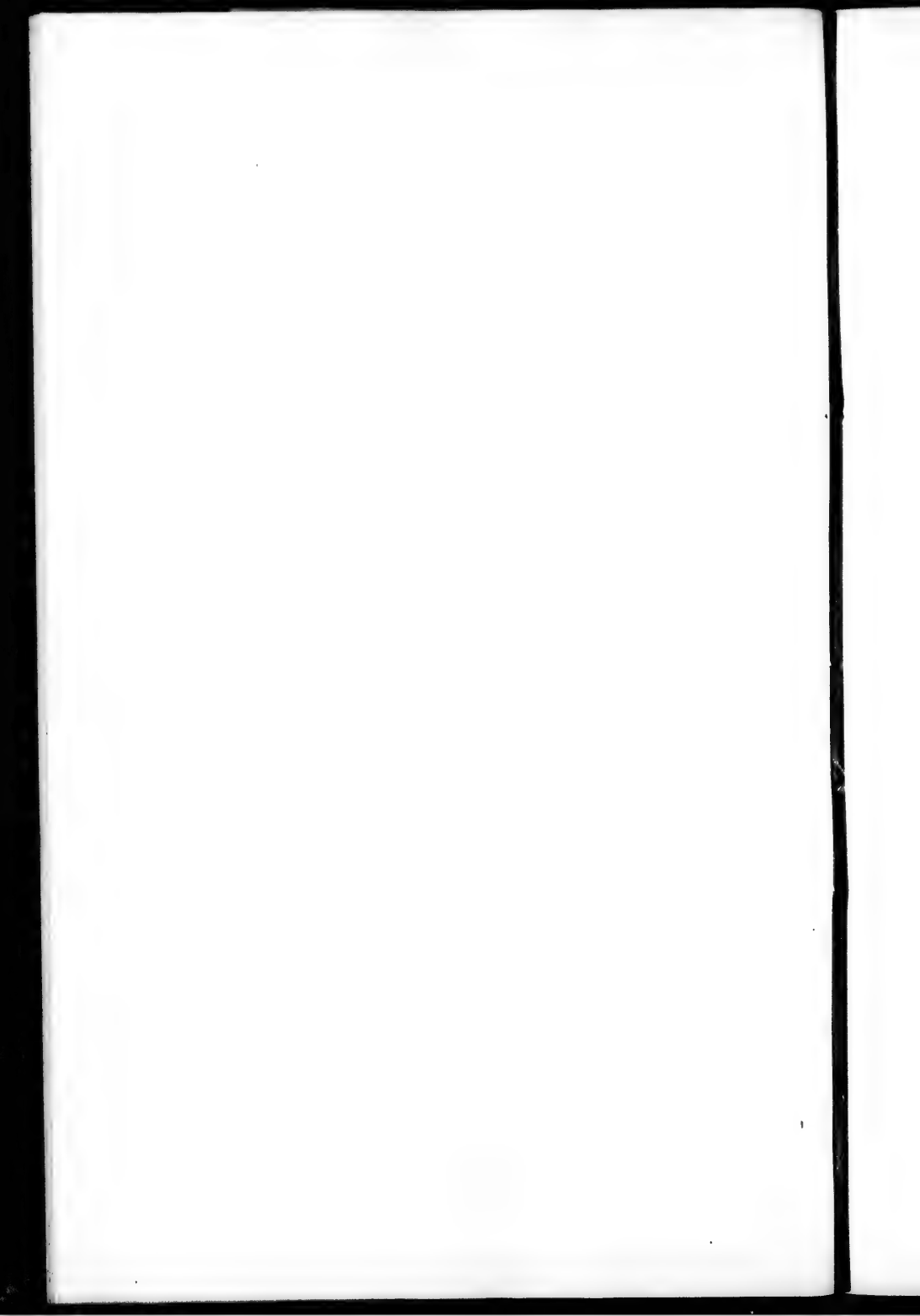
It may be repeated that on the appearance of a statement in the San Francisco "Daily Chronicle" on the 21st March, 1872, to the effect that parties were preparing to hunt the fur-seal in Behring Sea, Mr. Phelps, the Collector of Customs at San Francisco, wrote to Mr. Boutwell, the Secretary of the United States' Treasury, that the object of these several expeditions was unquestionably to intercept the fur-seals at the narrow passages between the Aleutian Islands, and he recommended the sending of a steam revenue-cutter to those waters to prevent these parties from carrying out their intentions.

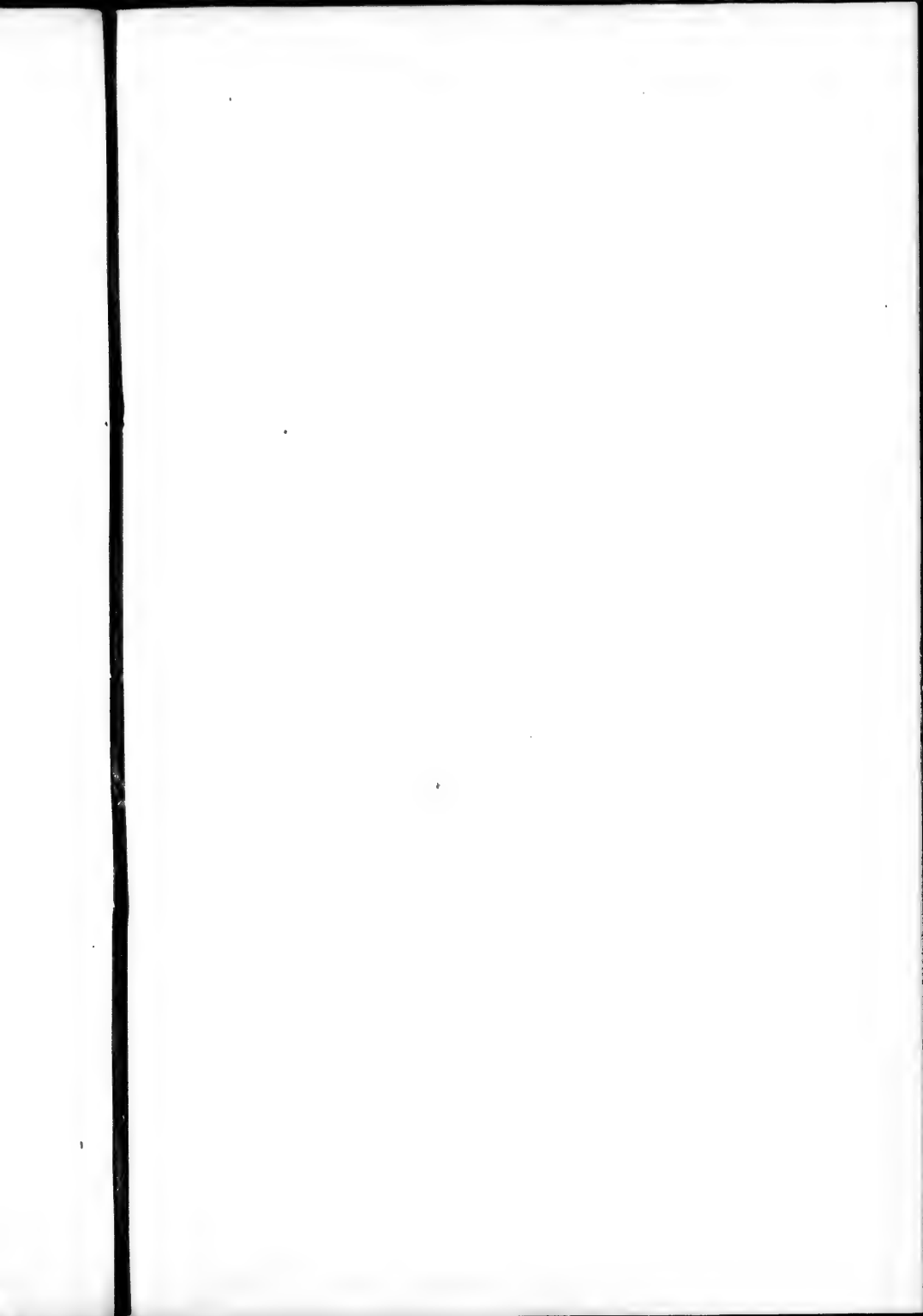
On the 19th April, 1872, Mr. Boutwell replied to the Collector's request that he did not think it expedient to carry out the suggestion, giving as a reason, among others, that he did not see—

Ibid., pp. 106, 109. "that the United States would have the jurisdiction or power to drive off parties going up there for that purpose, unless they made each attempt within a marine league of the shore."

Ibid., p. 109,
foot-note.

It is true that in 1888, and after the occurrence of the seizures of the British ships in 1886 and 1887, Mr. Boutwell explained, by request, that his letter had reference solely to the





waters of the Pacific Ocean south of the Aleutian Islands.

This does not otherwise appear.

British Case,
pp. 104-106.

The British Case contains instructions sent to United States' officials in 1870.

They do not support the statement now made in the United States' Case that—

"Since the year 1867 the Treasury Department has, United States' Case, p. 81
every year, with a single exception, sent one or more revenue-cutters to Behring Sea for the purpose of guarding the interests of the United States centered there, including the protection of fur-seals, against the infractions of the law relating to them."

No instructions to this effect have been produced.

There is, on the contrary, evidence of the absence of such instructions.

Captain Shepard, of the United States' 50th Cong., 2nd Sess., H. R., 433, pp. 239, 239.
revenue-cutter "Richard Rush," stated before the Congressional Committee of 1889 that though vessels were sealing in Behring Sea in 1888, under his instructions he could not seize them.

During his evidence the following statements were made:—

"Captain Shepard's Testimony."

"Mr. Dunn.—There is no discriminating between an American and a British vessel. One would have been seized under precisely the same circumstances as the other? —A. The law makes a little distinction between an American and a British vessel in regard to the killing of female seals and seals under one year of age. Ibid., p. 240.

"Mr. Dingley.—The law makes a distinction or the Treasury Department: which?—The Witness.—I understand the construction the Treasury Department puts on the law is that they can prohibit the killing of female seals or seals under one year old by an American vessel anywhere, but they could not enforce that Regulation on a foreign vessel.

"Mr. Dunn.—You understand the Treasury Department puts that construction upon the law. Is there a different construction embodied in the orders given officers of revenue-vessels?—A. Yes, Sir; they prohibit the killing of female seals and seals less than one year old by American vessels anywhere.

"Mr. Dingley.—If I understand you correctly, British vessels were allowed to do certain things that American vessels were not allowed to do.

"Mr. Dunn.—He states the Treasury Department places a construction upon the Statute which does discriminate between an American and British vessel."

Upon this subject it is interesting to note the following Resolution.

Mr. Hermann, in Congress in 1898, submitted the following Resolution, which was read :—

"Congressional Record," vol. xix, Part I, p. 984, House, February 6, 1898.

"Resolved,—That the Secretary of State be and he is hereby requested to inform this House, if not incompatible with the public interest, what has been done by the Department of State in asserting the authority and dominion of this Government over the waters of Alaska and Bering Sea, embraced in the Treaty of 1867 between the United States and Russia; and whether any legislation is necessary on behalf of the United States to assert and maintain such authority and dominion, or for the protection of our fur-seal and other fisheries in said waters, and whether vessels, both foreign and domestic, adjudged by the Courts of the United States to be confiscated as well as their cargoes, for fishing unlawfully in said waters, have been released, and, if so, by what authority?"

Mr. Dingley, in 1889, submitted the following Resolution, which was referred to the Committee on Merchant Marine and Fisheries, and ordered to be printed :—

Ibid., vol. xxx, Part II, p. 1660, House, January 21, 1889.

"Resolved,—That the Secretary of the Treasury be and is hereby requested to inform the House what orders were given to the Commander of the United States' revenue-cutter "Richard Rush" in reference to the protection of the seal fisheries in Bering Sea in the spring and summer of 1888, and whether such instructions differed from those given the same Commander in the season of 1877; and, if so, what reasons existed for any material change in such instructions; and the Secretary of the Treasury is further requested to transmit to the House copies of all orders given to the Commanders of the United States' vessels charged with the protection of the seal fisheries in the seasons of 1886, 1887, and 1888."

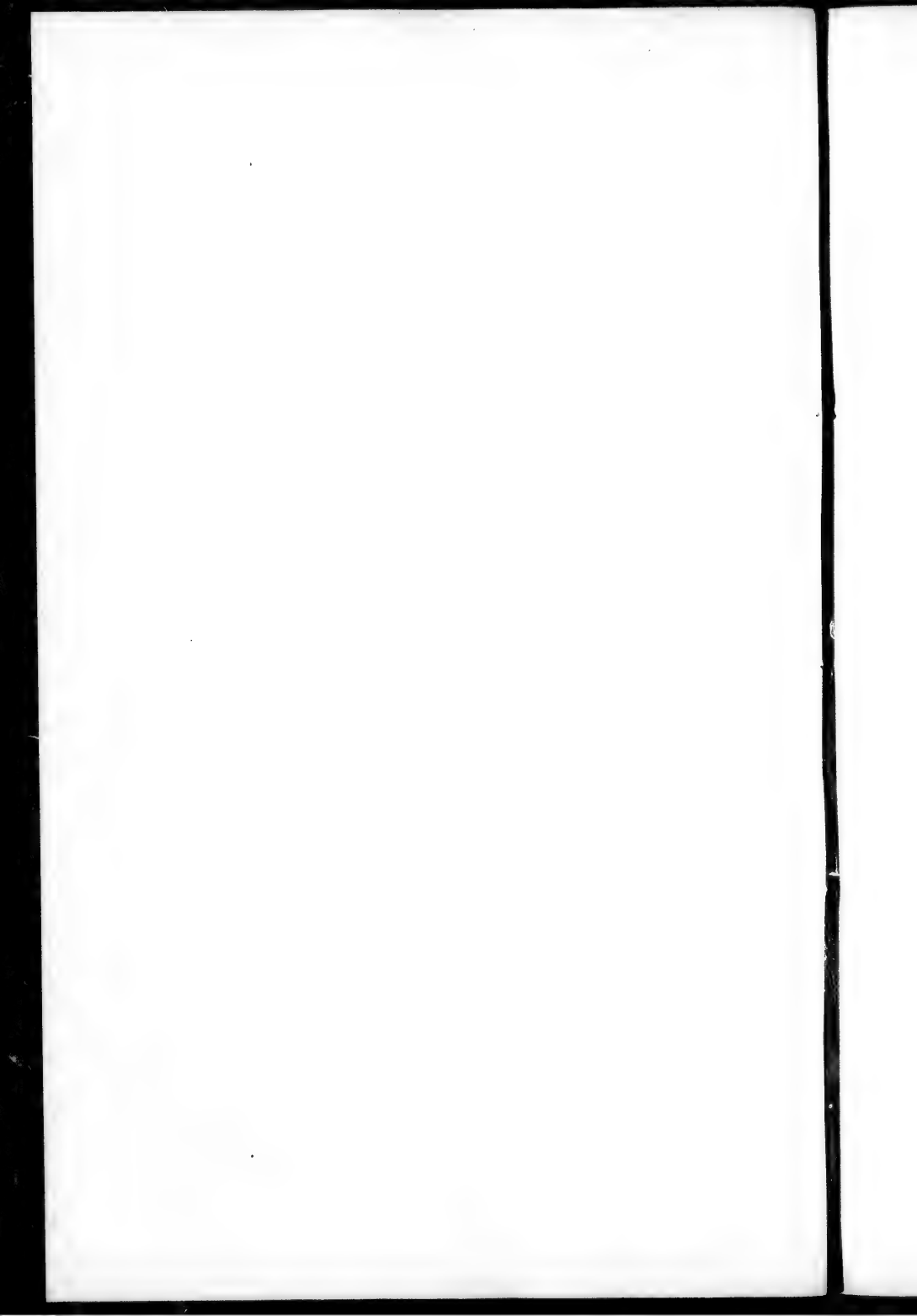
No action has as yet been taken by the Executive upon these Resolutions, and the information is not, therefore, now available.

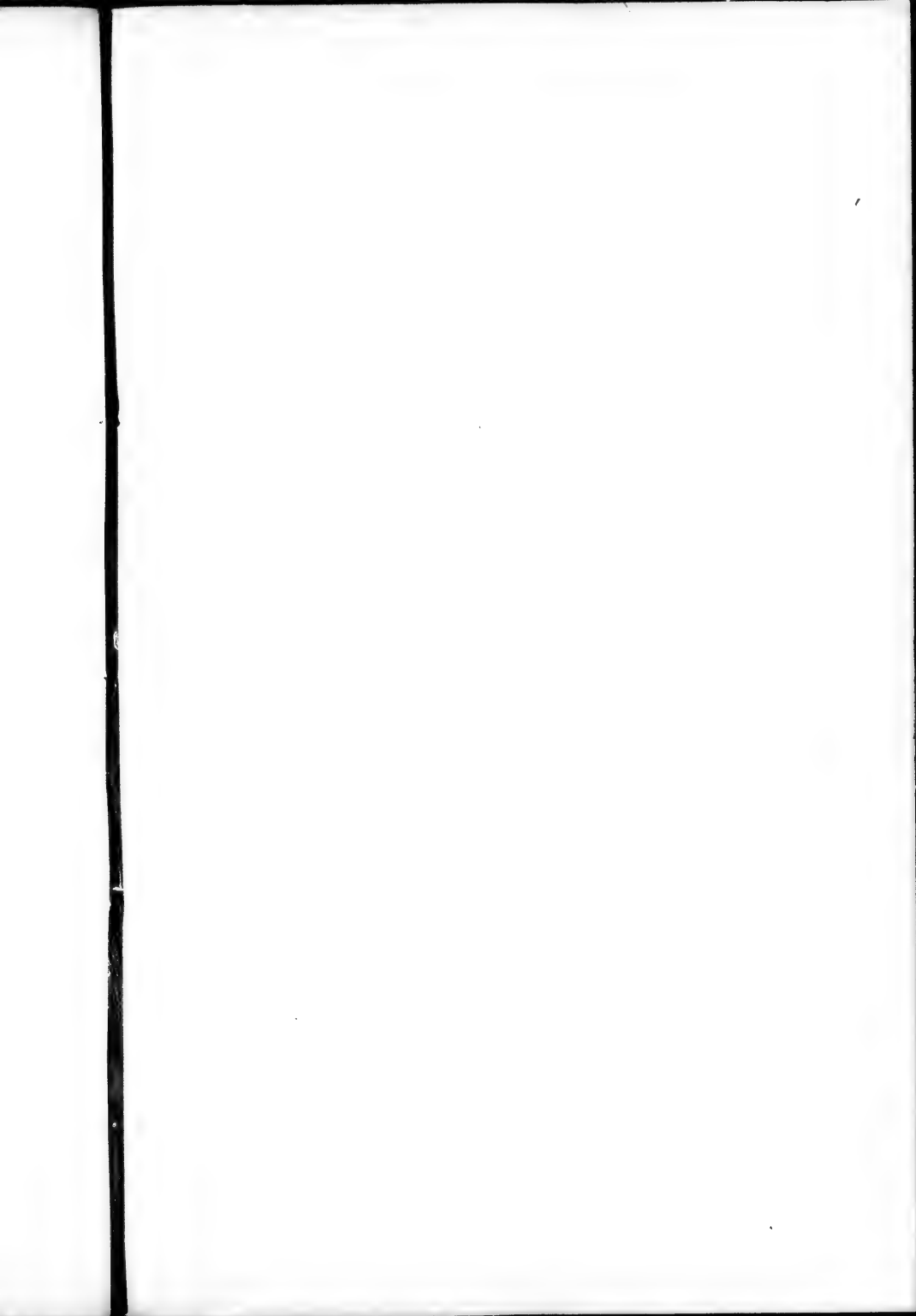
British Case, p. 112.

It is asserted in the British Case that, not until 1886, the year in which the seizures took place, did the United States' authorities instruct the revenue-cutters, or other vessels, to interfere with foreign ships upon waters outside of the 3-mile limit in Behring Sea.

Ibid., pp. 108, 104, 110-112.

Evidence is also given in the British Case that raids upon the islands were almost incessant from the day of Cession, and that pelagic sealing was well known to be in progress since 1881. If, however, it be admitted, as it is contended, that the United States' Government took action as soon as they knew of the infraction of the





law contained in the Revised Statutes of the United States, in Behring Sea, this would indicate that no property right was even in 1886 supposed to exist in seals as such.

The unofficial assurance—"that no seizures would be made; for at that time negotiations were being carried on looking to an amicable adjustment of the points at issue with regard to Behring Sea"—given to the British Government in 1888 was given after the protests of the British Government. The *modus vivendi* of 1892 was not a renewal of the *modus vivendi* of 1891, as stated in the United States' Case. It was entirely a new arrangement, including the sealing season of 1893 as well as that of 1892.

British Case,
Appendix, vol. ii.
United States'
Case, p. 82.

The decision of the Alaska Court was based expressly on the ground that the exclusive jurisdiction was vested in the United States over that part of Behring Sea within the line of demarcation of the Treaty of 1867, because the whole of the sea was an inland sea when possessed by Russia. It was said to be a closed sea, even though one side was in Russia and the other in the United States.

So in the District Court of Washington Territory.

Upon an appeal from the decision of the Alaskan Court to the Supreme Court of the United States, the Government of that country successfully resisted the consideration of the merits of the case.

Until 1886 no "understanding" could have existed that justified the active assertion of such a claim.

Indeed, it further appears from the evidence given by United States' Government officials, and by the questions of the Chairman in the Committee of Congress in 1889, that the question was then under consideration as to whether there should be an active assertion of authority in the deep waters of Behring Sea, and, if so, upon what grounds it should be based.

Even raiding on the rookeries has gone unpunished.

One of the United States' officers, Mr. W. B. Taylor, said:—

"Out of twenty years I do not think there has been more than three or four owners of vessels that have been punished; when perhaps there have been a hundred or so prowling round in these waters."

50th Cong.,
2nd Sess., H. R.,
3883, p. 54.

The evidence of officials who were on the Seal Islands, given before the Congressional Committee of 1889, shows that they regarded the doctrine of *mare clausum* as a theory which should be set up for the future, and not as a settled policy or a previous understanding.

Accordingly the Chairman of the Congressional Committee proceeded to examine a witness in the following manner:—

50th Cong.,
2nd Sess., H. R.,
3883, p. 58.

" Q. If it was finally to be determined by the Government, after an adjudication and full consideration, that the Bering Sea is a closed sea, and that under the Treaty of Cession, by which we acquired it from Russia, and under the law of nations, the Government of the United States is entitled to exercise absolute and complete dominion and jurisdiction over the Bering Sea in Alaska as a closed sea and as inland water, would you think it a wise policy to abandon and surrender any portion of that jurisdiction, and open that sea as a high sea to all nations ?"

Mr. Taylor's examination was continued:—

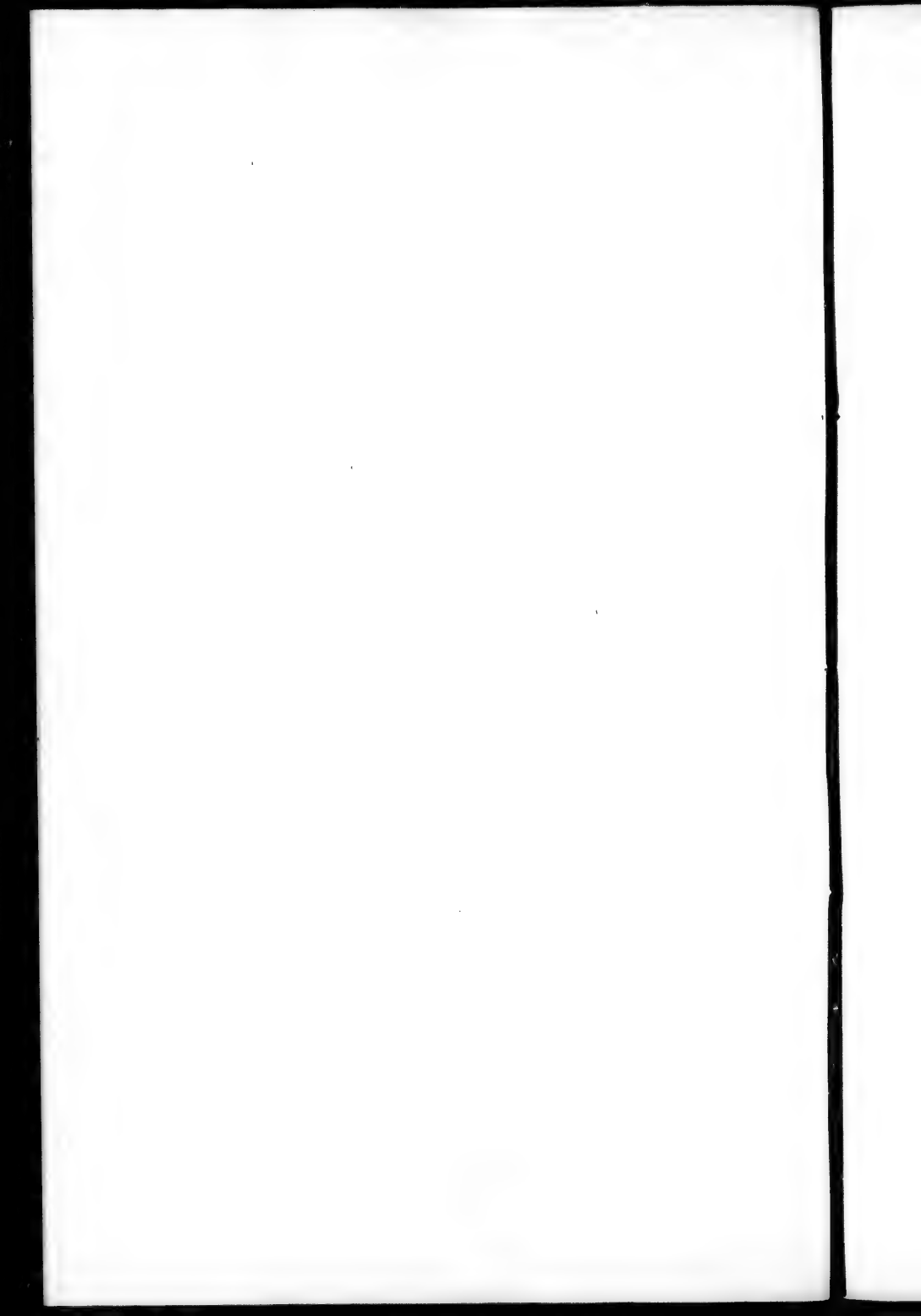
Ibid., p. 58.

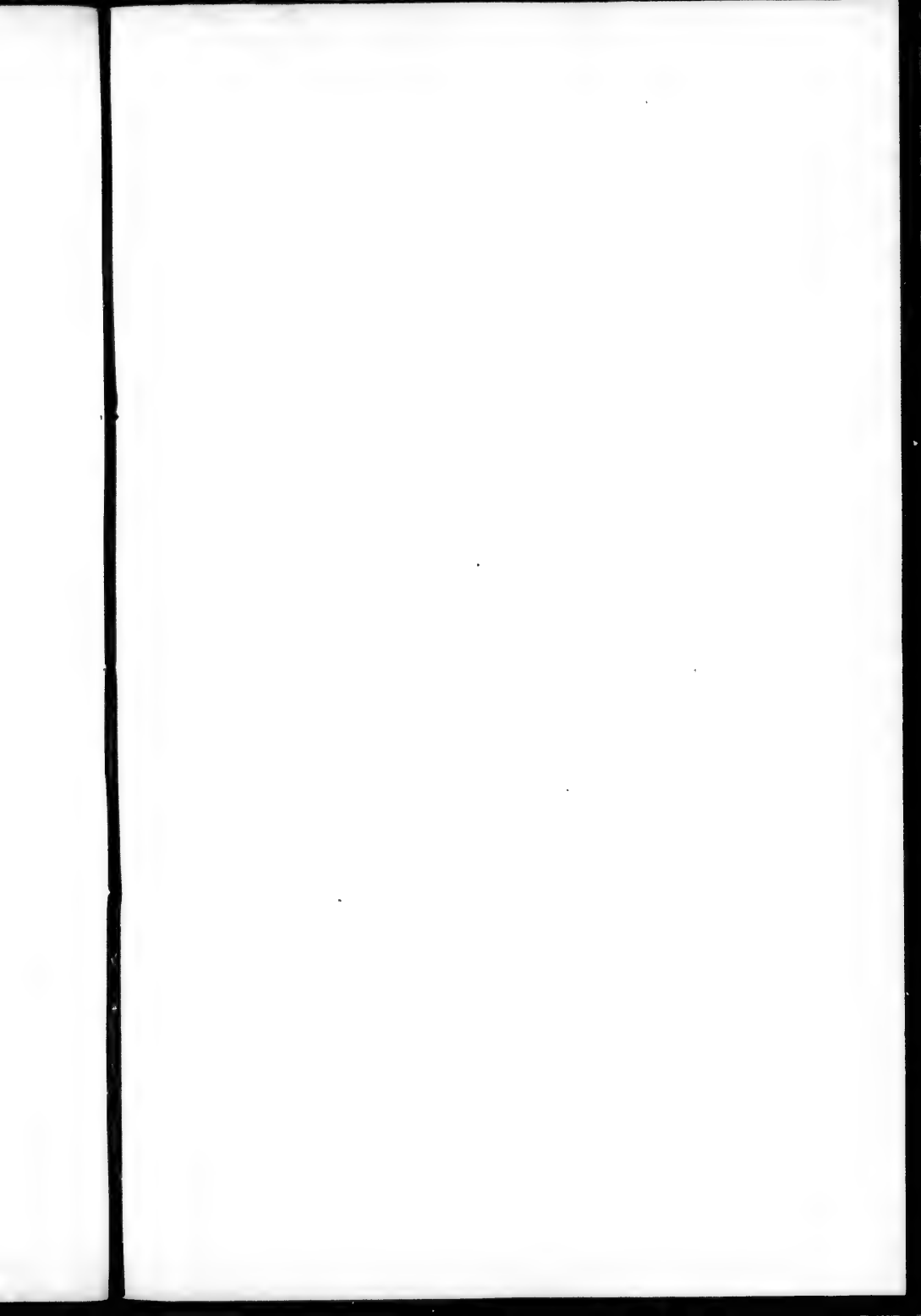
" Q. Now, there has been a good deal of seal killed in the waters of Bering Sea by unauthorized persons. I want to ask your judgment as to the effect of that upon the seal business if it is kept up—what it will be upon the rookeries?—A. That is something about which I think the Government ought to be more stringent, even, than they have been. I think that the Government ought to take it that Bering Sea is an inland sea, and so ought to have absolute control, regardless of any Treaties or Fishery Laws, over Bering waters from a line drawn west of Attou through the centre of the Bering Sea. These waters are just as much in the territory of the United States as any part of their lands. They are inland waters running out to Attou. There are only a very few vessels that go through the peninsula in all that 800 miles distance, and it is to all intents and purposes an inland sea, and should be so regarded; and I think the Government ought to take that position. And after we take that position I believe there ought to be more stringent laws enacted which will make it a penitentiary offence for any man to go into these waters and kill these seals, going and coming from the islands for this reason."

* * *

On p. 75 of the United States' Case it is implied that the Report of the Congressional Committee of 1889 showed that the opinion of the Committee was to the effect that Alaska was purchased for the acquisition by the United States of its fur-bearing animals and fisheries.

It is submitted that the conclusion of this Committee in 1889 is no evidence for the United





States touching a dispute which arose with Great Britain in 1886. Since, however, it is referred to in the United States' Case, and in the British Case, it may be pointed out that it has been shown that upon a reference to the Committee on Marine and Fisheries of the House of Representatives in 1889, an investigation took place into the nature and extent of the rights and interests of the United States in the "fur-seals and other fisheries."

The Committee was asked whether any legislation was necessary for the better protection of these fisheries. The opinion of the Committee was that the sea within the limit of demarcation of the American coast was transferred to the exclusive jurisdiction of the United States. It was upon this ground only that it was contended that the United States had a right to legislate for the protection of the seals.

The Committee was of opinion that the "limits" of the Alaska Territory was defined by the Treaty so as to include the western portion of Behring Sea, and the sea was transferred as well as the land.

The Statute relating to Alaska was dealt with, and the Committee reported, among other things, as follows:—

"Fifth. That at the date of the cession of Alaska to the United States, Russia's title to Bering Sea was perfect and undisputed."

"Sixth. That by virtue of the Treaty of Cession the United States acquired complete title to all that portion of Bering Sea situate within the limits prescribed by the Treaty."

"The Committee herewith report a Bill making necessary amendments of the existing Law relating to these subjects, and recommend its passage."

In the opinion of the Committee the existing legislation did not sufficiently indicate the real extent of the jurisdiction of the United States over the waters in question, and an amendment declaratory to that intent was reported.

The various discussions on this Bill are given in an Appendix to this Counter-Case.

It will be seen that leading members of Congress hesitated in 1889 to define the exact nature and extent of the jurisdiction of the United States.

Senator Edmunds regarded it as a "difficult" and a "delicate" question.

"The Fur-seal and other Fisheries of Alaska," 50th Cong., 2nd Sess., H. R., 3883, January 29, 1889, p. 23.

See British Case, p. 124.

For discussion in Congress of this amendment, see Appendix to British Counter-Case.

See Appendix.

Senator Hoar considered the amendment to the existing legislation as *presenting* the great question whether the United States "*propose to assert the doctrine of *mare clausum* in regard to a sea larger than the Mediterranean, and the gateway to which is 450 miles wide.*"

Senator Morgan—now one of the members of this Tribunal of Arbitration—spoke as follows:—

"Before the Bill is referred, I desire to say a word about the amendment. I do not understand that section 3 proposed to the Bill does present the question of *mare clausum*. It presents simply the question whether the United States, having on the Aleutian Islands very valuable fur-seal fisheries, have the right to protect those animals in seas that do not belong strictly to the *mare clausum* principle, and which are very valuable to commerce, against that kind of fishing and hunting that is utterly destructive of the whole of the generation of fur-seals.

"The principle upon which I understand the amendment to be based is entirely independent of any Treaty stipulation between the United States and any foreign country, although, in view of our Treaty relations with Russia upon the subject of the Alaskan purchase and Russia's former assertion of the right to control the waters of the Behring Sea, I could not permit myself to admit, on the floor of the Senate, that that pretension of Russia was entirely unjust, and that in purchasing Alaska we did not succeed to her rights in that particular.

"But I desired only to say that I do not consider that the question of *mare clausum* is involved in the third section proposed to the Bill by the House of Representatives."

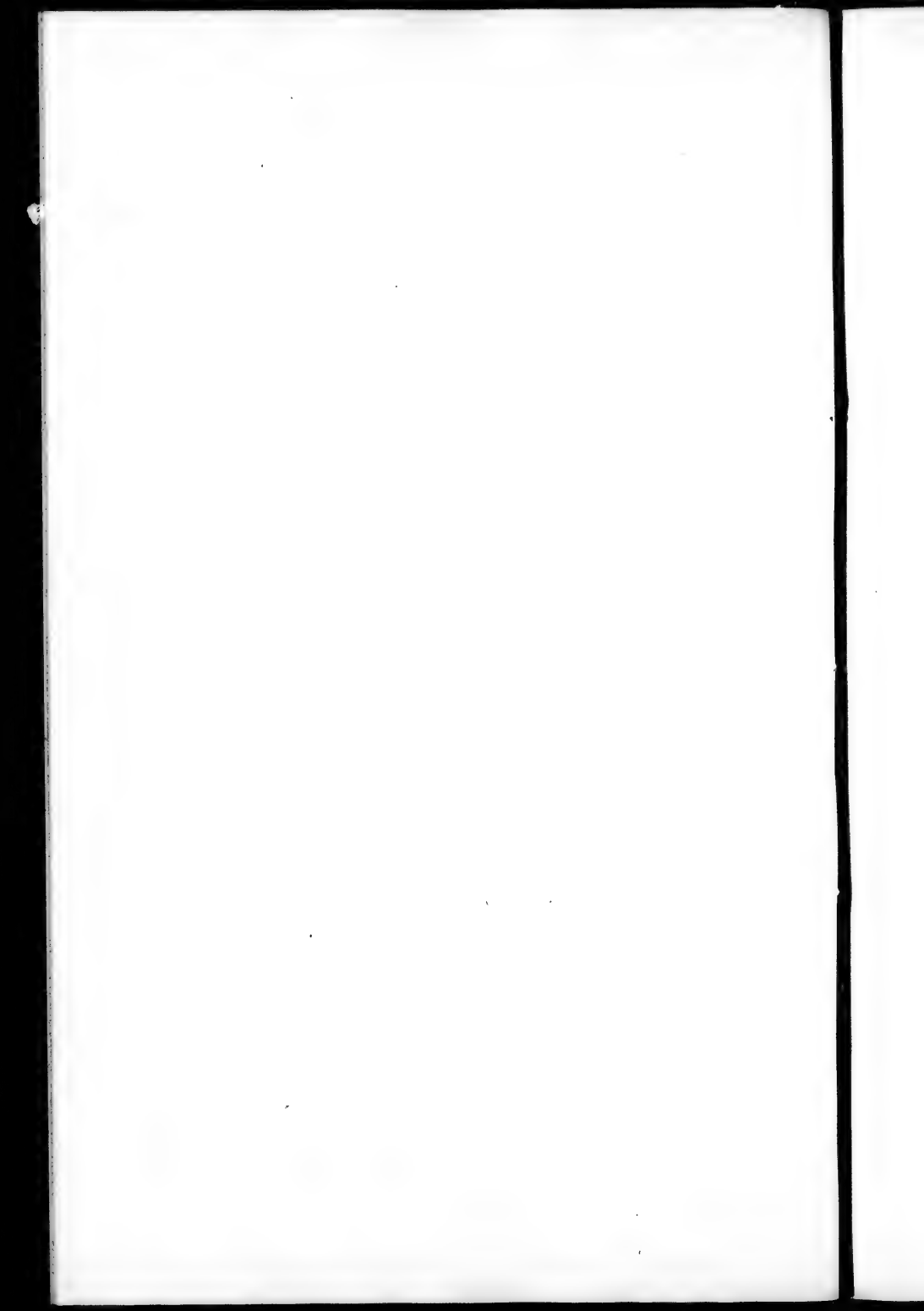
Speaking again upon the subject, Senator Morgan, in advocating the rejection of the amendment, spoke as follows:—

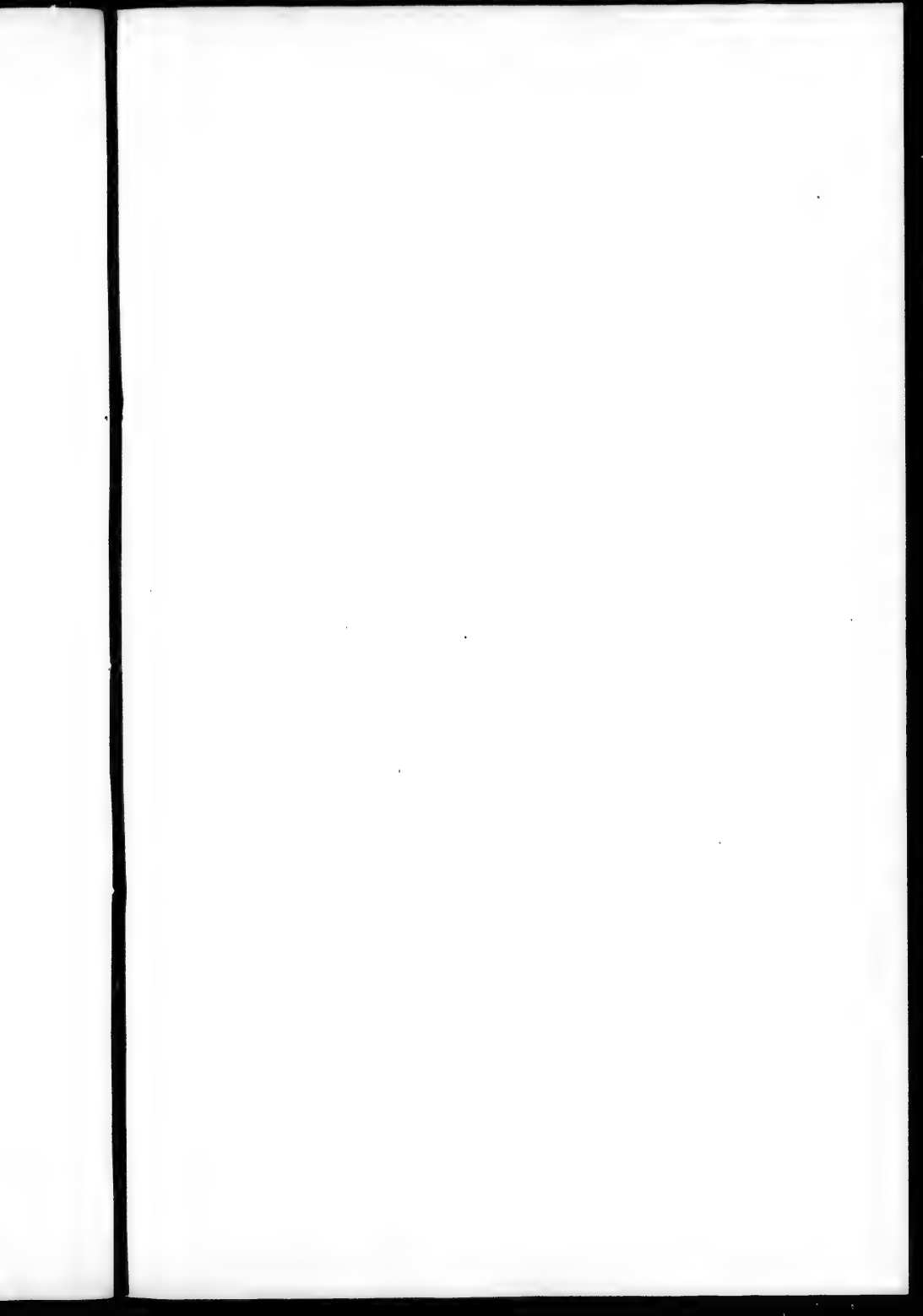
Appendix to British
Counter-Case.

"... We only arrive at the conclusion that the question presented in the amendment of the House is of such a serious and important character that the Committee on Foreign Relations would not undertake at this time to pronounce that kind of judgment upon it which is due to the magnitude of such a question.

"I desire that the Bill, as it passed the Senate originally, should pass, because it protects the salmon and other fisheries in Alaska, about which there is no dispute; but this particular question is one of very great gravity and seriousness, and the Committee on Foreign Relations, or at least a majority of the entire Committee, did not feel warranted in undertaking to consider it at this time."

Senator Sherman stated that the amendment was a grave one, and involved serious matters of international law.





As stated in the British Case, the amendment was ultimately rejected.

In 1888 Senator Morgan found the majority of the Senate objecting to a Treaty which conceded to Canada jurisdiction over inland seas or bays where the width at the mouth was 10 miles or under.

It is clear from his speech on that occasion that Mr. Morgan perceived that the doctrine of "closed sea" or "purchase" of half of Behring Sea could no longer be maintained if such an attitude were assumed by his country on the Atlantic coast as the majority of the Senate were advocating.

Senator Morgan said :—

"When we go to the other side of the continent and discuss the question of the right of the fishermen of British Columbia in our Alaskan waters and upon our Alaskan coast and in the Behring's Sea, we shall have a new puzzle to get along with.

"We have come, by purchase from the Russian Government, to the control of one-half of what might be termed an unclosed sea. This brings us in contact with a question—perhaps you might call it a headland question—affecting the richest fisheries of this world, fisheries that are four or five times as extensive as those on the north-eastern coast, and far more abundantly stocked with food fishes. We shall come in practical contact with these questions in a very brief time, if we are not already in contact with them, and we shall find that they will come upon us in possibly a very unexpected way.

"In view of what we acquired in the purchase of Alaska, and in view of what are the necessities of the situation upon that broken and rugged coast, I am not willing to admit that a 3-mile fringe of jurisdiction, including the right of exclusive fishery within the line, and excluding the right outside of it, is the boundary of our rights upon a question of this kind. I cannot do it without surrendering in advance those advantages which belong to us by nature, as well as by compact with Russia in favour of our fisheries upon the Alaskan coast and in the Behring's Sea and Straits. The American statesman who makes a surrender of these questions now in dealing with this Treaty with Great Britain will find himself confronted with a difficulty the magnitude of which he does not now probably comprehend, which it seems to me will crush him as corn is crushed between the upper and nether millstone. The statesmanship that we are observing in this partizan higgling about the Treaty of 1888 is of a character to betray us in respect to some of the most important rights that we possess on the north-western coast. It will affect the food supply to the poorer classes of this country for generation after generation.

"Congressional Record," vol. xix, Part VIII, pp. 7720, 7721, Senate, August 20, 1888 : Senator Morgan's speech on the Fisheries Treaty, 1888.

"Congressional Record," vol. xix, Part VIII, p. 7736, Senate, August 20, 1888, Senator Morgan's speech on the Fisheries Treaty, 1888. See also Report of minority of Committee, Senate, 50th Cong., 1st Sess., Misc. Doc., No. 109, pp. 64-66.

"But, Sir, the right of fishing in those bays was a trifling matter, and it has been so asserted by your Committee on Foreign Relations and by the Senators who oppose this Treaty. And that surely cannot be a substantial argument against a delimitation which includes bays that are less than 10 miles wide. The example for that, as I have had occasion to mention in some remarks made by me heretofore, is found in the arrangements between maritime countries in their modern Treaties relating to fishing. They have changed the rule so as to shut out foreign fishermen from access to the coasts of their bays that are less than 10 miles wide, and they will not permit any fishing-ship to come within 3 miles of a line drawn across the mouth of a bay which measures less than 10 miles in width. There is no reason that I know of why the American Government should not adopt that particular arrangement, especially as we have to make some arrangement before a great while, I suppose, with reference to our Alaska fisheries—fisheries that are of very great value, and to which I have often adverted. If we have to go over to the Pacific with a line 3 miles from our shore, established upon a principle of acknowledged international law, we are to admit the people of all nations to come and fish in our waters, and shall give that up to foreign countries without any reciprocal advantage at all. We will do this recklessly upon a conceded principle of international law that this Senate is about to decree; we shall give up some of the most important rights and advantages that this nation can have in the future."

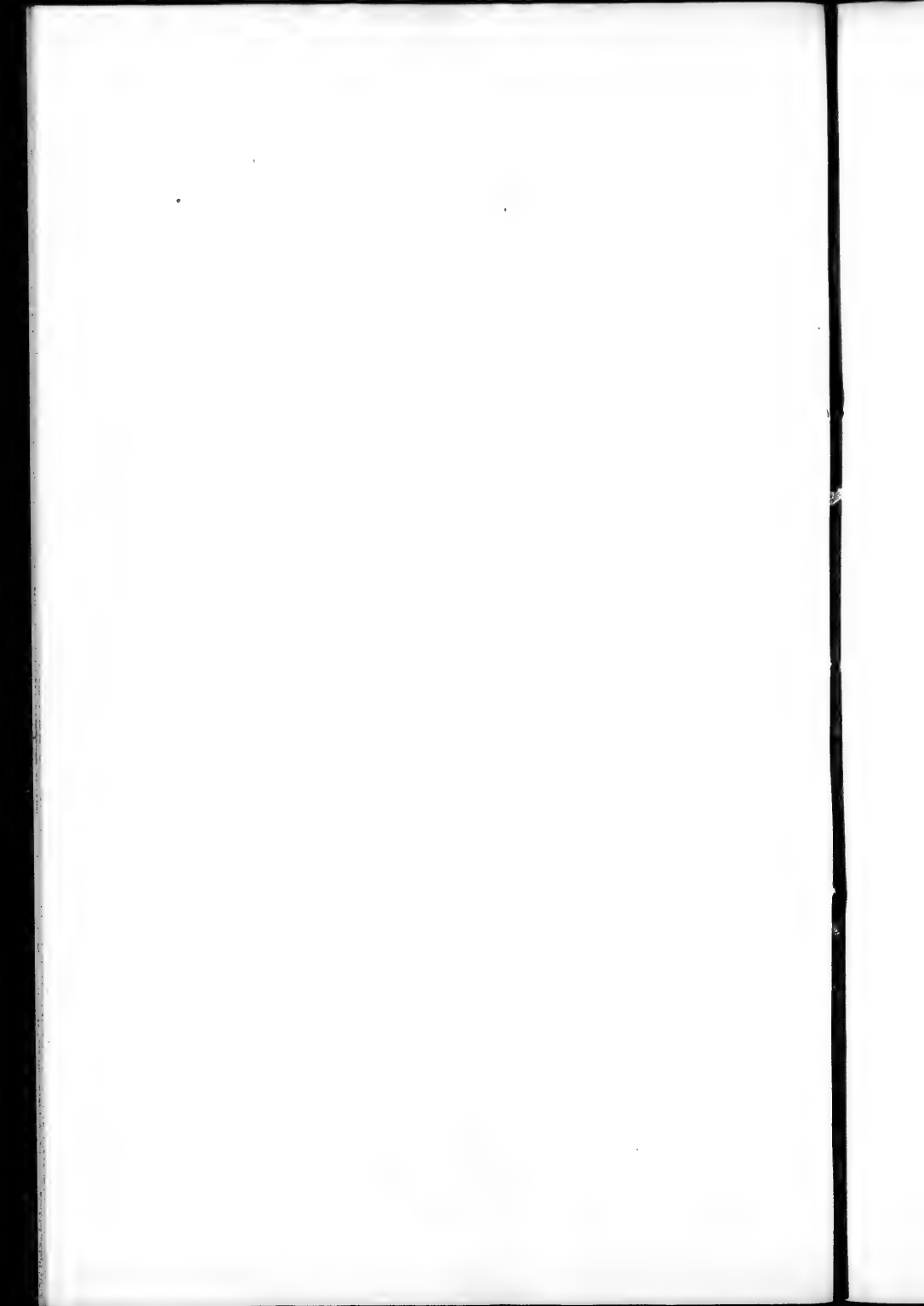
The Senate rejected the Treaty.

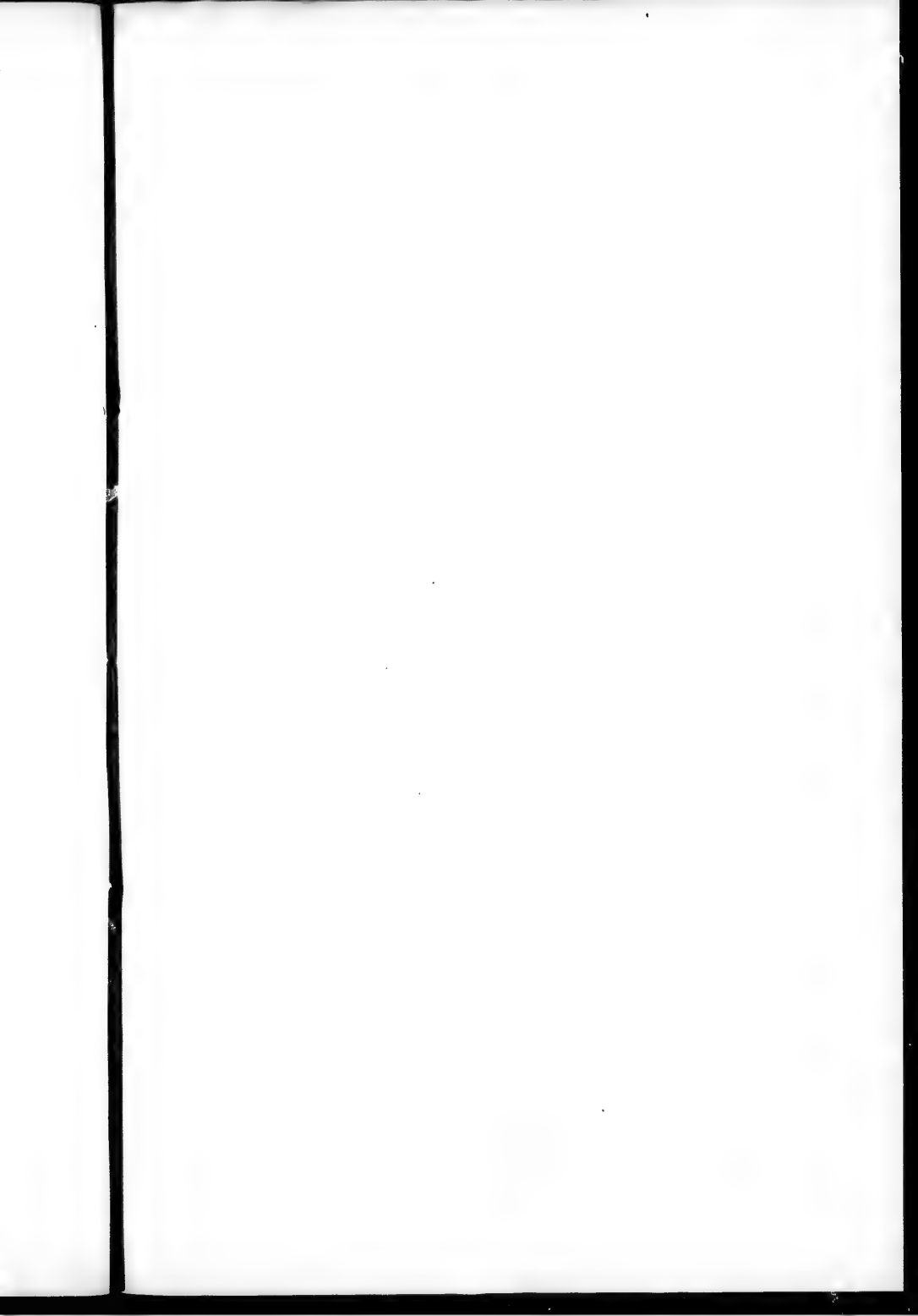
Since Reclus is cited as an authority by the United States it may, perhaps, not be out of place to give the following extracts from his "*Nouvelle Géographie Universelle*":—

"... In reality, Alaska was not considered worthy of the attention of the Washington legislators, when the Government saw fit to interfere for defending the interests of the Company, to which had been granted the Pribilof Islands, by declaring Bering Sea to be a 'closed sea,' and forbidding all foreign ships to hunt there seals and morses even outside of the line of 3 nautical miles along the shores. It is not yet known whether these claims, inconsistent with the precedents of international law, will be admitted by Great Britain, the State most interested in the question of fisheries in northern waters. In 1821 Russia had also claimed the right to close in her own interest Bering Sea, of which she then owned both shores; but this claim, more justified in appearance than the claim of the United States, was not admitted by the other Maritime Powers.*

"... As to the consciousness of its strength, the American nation feels it to such a degree that it is possible for its Government to indulge in it to excess, as it did

* J. G. Kohl, "Geschichte der Entdeckung Amerika's," (Réf. in "*Nouvelle Géographie Universelle*," vol. xv, p. 261.)





towards England, by contending, against all diplomatic precedents, even against common sense, that Bering Sea is a 'closed sea.'—(Réclus, "Nouvelle Géographie Universelle," vol. xvi, p. 105.)

Touching the introduction of the words "seal-herds" and "sealeries," it may again be observed that in no part of the correspondence of Russia with Great Britain or with the United States, relating either to 1824, 1825, or to 1867, are these words used. No reference was made to "rookeries" or to seals.

The fur-seals are referred to in the United States' Case as "the great source of wealth" of the Company, whereas, in fact, the sea-otter was originally the chief source of wealth. It was only in later years that the value of seal-skins became important.

The United States claim that the value of the seal-skins was the chief inducement for the purchase of Alaska in 1867.

To prove this, a Report of the Congressional Committee of 1888 is produced. This Report, however, was made two years after the United States had asserted, for the first time, a claim to jurisdiction over the waters in Behring Sea, east of the line of demarkation mentioned in the Treaty of Cession.

Evidence to the contrary of this statement is found in the British Case.

The Report of a much earlier Congressional Committee shows how little the fur-seal was thought of in this connection in 1867.

In this Report it is said:—

"When the proposition to purchase the Alaska Territory from Russia was before Congress, the opposition to it was very much based on the alleged barrenness and worthlessness of the territory to be acquired. It was supposed that, though there might be many political reasons for this addition to the American Pacific possessions, there were not commercial or revenue advantages. The value of those Seal Islands was not considered at all. Russia had derived but little revenue from them; indeed, a sum not sufficient to pay the contingent expenses of maintaining the official authority. Under our system, however, we have a very different result."

In addition to this, the authority in the United States, and on whose statements the Government of that country largely relied until this Convention was signed—H. W. Elliott, of the Smith-

United States' Case, p. 73.

See Appendix as to the sea-otter.

See Appendix as to values of fur-seal skins at various times.

British Case, pp. 99-124.

Report of Committee on lease to Alaska Commercial Company, H. R., 44th Cong., 1st Sess., Report No. 623.

sonian Institute—in writing upon "The Seal Islands of Alaska," 1881, said :—

Page 25.

"It will be remembered by many people that when we were ratifying the negotiation between our Government and that of Russia, it was made painfully apparent that nobody in this country knew anything about the subject of Russian America. Every schoolboy knew where it was located, but no professor or merchant, however wise or shrewd, knew what was in it. Accordingly, immediately after the purchase was made, and the formal transfer effected, a large number of energetic and speculative men, some coming from New England even, but most of them residents of the Pacific coast, turned their attention to Alaska. They went up to Sitka in a little fleet of sail- and steam-vessels, but among their number it appears there were only two of our citizens who knew of or had the faintest appreciation as to the value of the Seal Islands. One of these, Mr. H. M. Hutchinson, a native of New Hampshire, and the other, a Captain Ebenezer Morgan, a native of Connecticut, turned their faces in 1868 toward them. Mr. Hutchinson gathered his information at Sitka; Captain Morgan had gained his years before by experience on the South Sea sealing-grounds."

And again :—

"The Seal Islands of Alaska," by Henry W. Elliott, 1881, pp. 68, 69.

"Strange ignorance of their value in 1867.

"Considering that this return is the only one made to the Government by Alaska since its transfer, and that it was never taken into account at first by the most ardent advocates of the purchase of Russian America, it is in itself highly creditable and interesting; to Senator Sumner the friends of the acquisition of this territory in 1867 delegated the task of making the principal argument in its favour. Everything that was written in strange tongues was carefully translated for the choice bits of mention which could be found of Alaska's value. Hence his speech on the subject possesses this interest: (Speech on Cession of Russian America, United States' Senate, 1867, 'Summary,' p. 48.) It is the embodiment of everything that could be scraped together having the faintest shadow of authenticity by all of the eager friends of the purchase which gave the least idea of any valuable natural resources in Alaska; therefore, when in summing up all this he makes no reference whatever to the Seal Islands, or the fur-seal itself, the extraordinary ignorance at home and abroad relative to the Pribyloff Islands can be well appreciated."

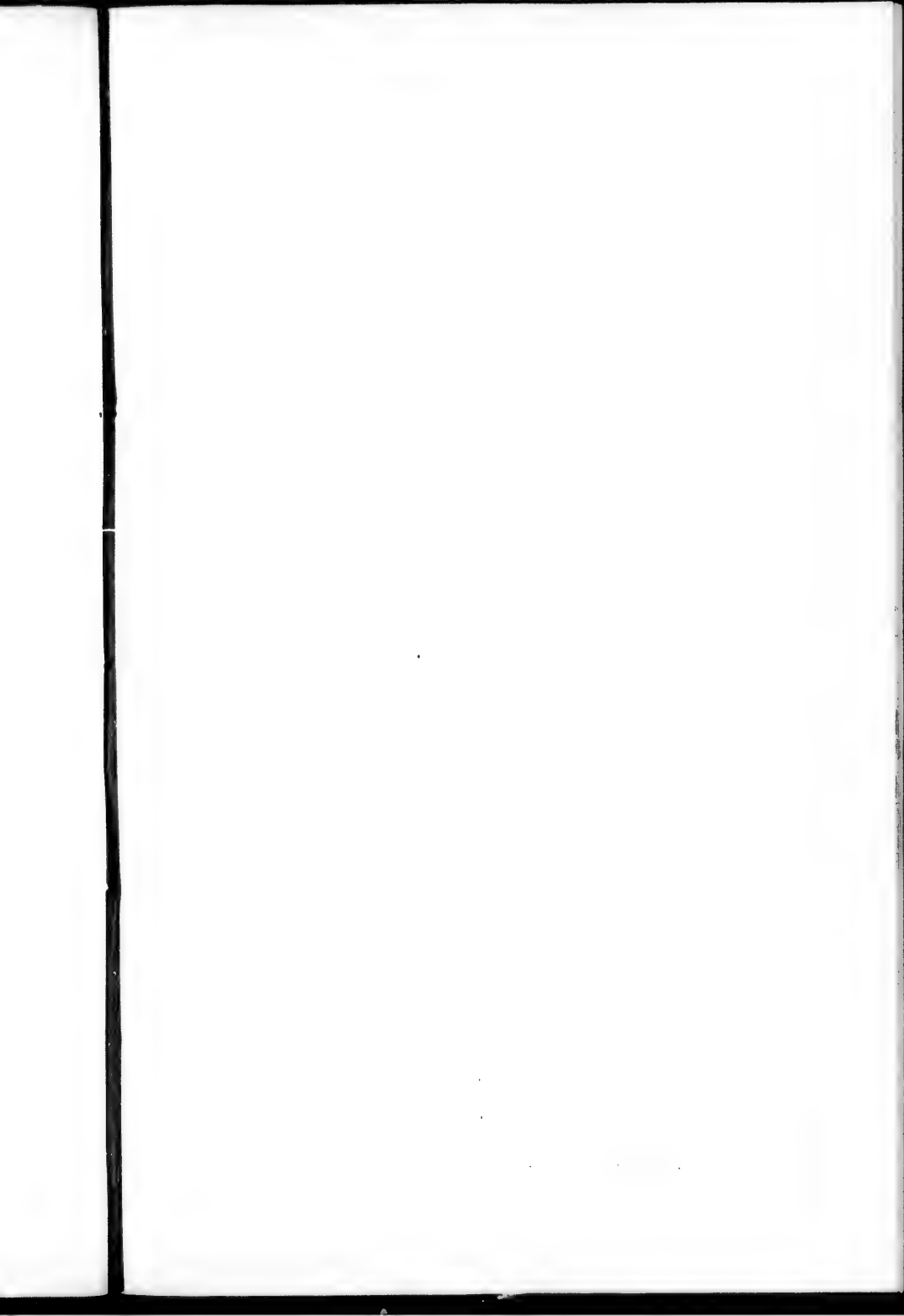
Foot-note in original.

British Case, Appendix, vol. i. p. 43.

Under this head, a short, isolated, and ambiguous sentence is taken in the United States' Case from a long speech of Mr. Sumner—in the Case of Her Britannic Majesty this speech is given in full.

Ibid., p. 45.

In an examination of that speech, it will be found that sea-otters were again proved to have



been the great object of Russian enterprise in the exploits, notwithstanding the United States' Case now insists the fur-seal played the important part.

Mr. Sumner gives also the motives which moved the United States to purchase this country, as they have been stated in the British Case. *British Case, Appendix, vol. i, p. 48. Ibid., p. 43.*

The Petition which led to the acquisition did not refer to furs or fur-seals. *Ibid., p. 48.*

Mr. Sumner alluded, it is true, to "another influence" which "was felt." It was a desire to organize a "fur company." No reference to seals is made in this connection. *Ibid., p. 49.*

He refers again to the "Russian peltries and fisheries," and to "ginseng" and "sea-otter skins." *Ibid., p. 52.*

Again, in dwelling upon the "advantages to the Pacific coast," he does not specifically refer to "seals" nor to "rookeries."

He gives the extension of dominion as "another consideration." *Ibid., p. 53.*

He says:—

"Another motive to this acquisition may be found in a desire to anticipate the imagined schemes or necessities of Great Britain." *Ibid., p. 54.*

The extract from this speech, which appears in the United States' Case, comes after the above, and is preceded by the following introduction:—

"Here I am obliged to confess a dearth of information easily accessible." *Ibid., p. 57.*

He deals with the Russian Government of this territory, the population, its climate, vegetable products, marine products, in their order, and then comes to the subject of "furs." Contrary to the present contention of the United States, Mr. Sumner begins by saying:—

"I pass now to furs, which at times have vied with minerals in value, although the supply is now limited and less permanent." The trade is "essentially diminished." *Ibid., p. 77.*

In treating of the furs he begins with "foxes;" then reference is made to "wolverine," the "black bear," the "beaver," the "marten," which latter is, he states, "perhaps the most popular of all the fur-bearing animals that belong to our new possessions." The "seal" is

British Case,
Appendix, vol. i,
p. 81.

touched upon, the extract in the text being the first sentence of Mr. Sumner upon the subject.

The "sea-otter" is last mentioned, and Mr. Sumner states, "but in beauty and value it is first."

This was the animal, and not the seal, as stated in the United States' Case, "which tempted the navigator;" and "subsequent discovery," Mr. Sumner adds, "was under the incentive of obtaining the precious fur."

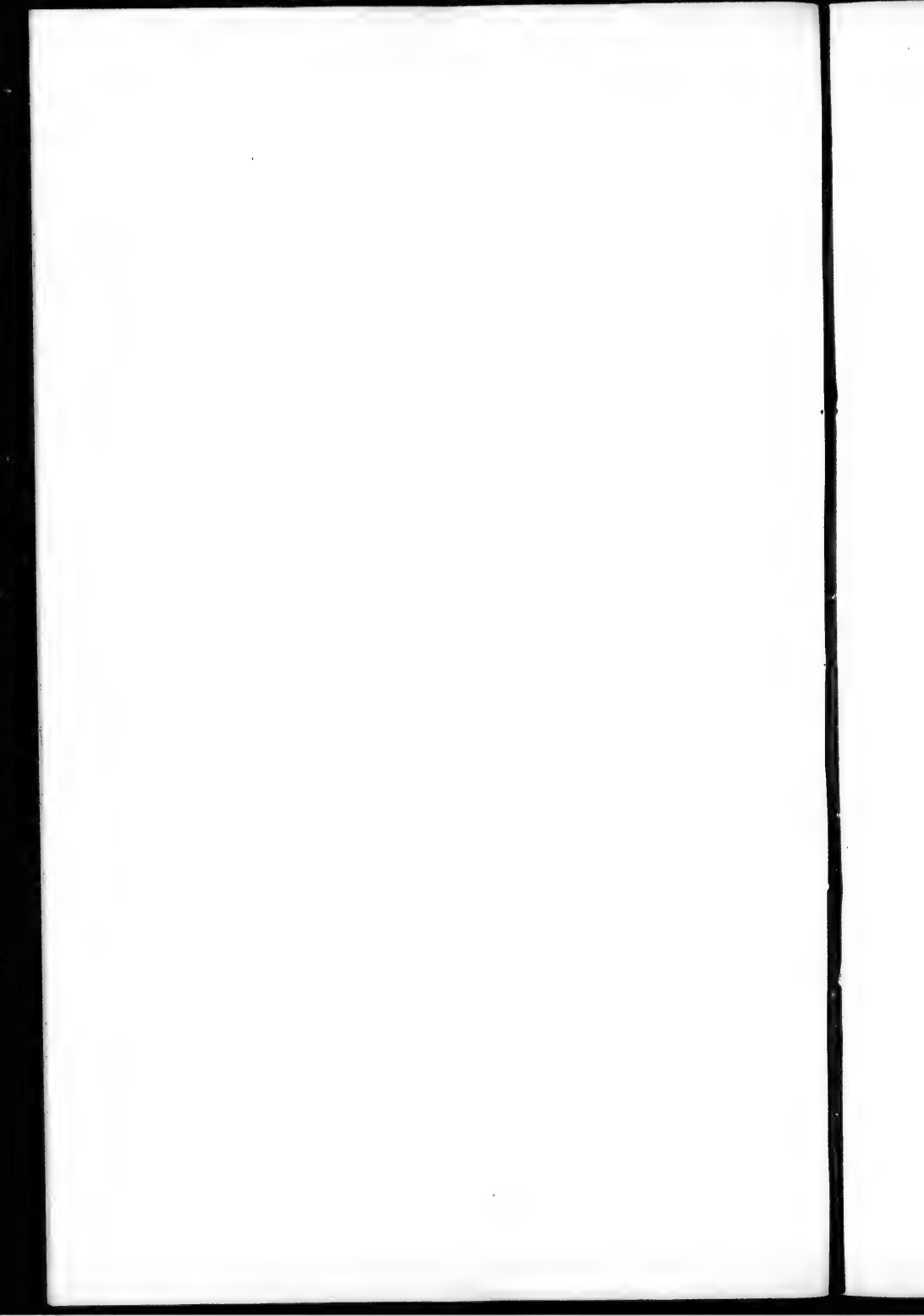
Mr. Sumner then took up the "fisheries," which he termed "perhaps the most important of all":—

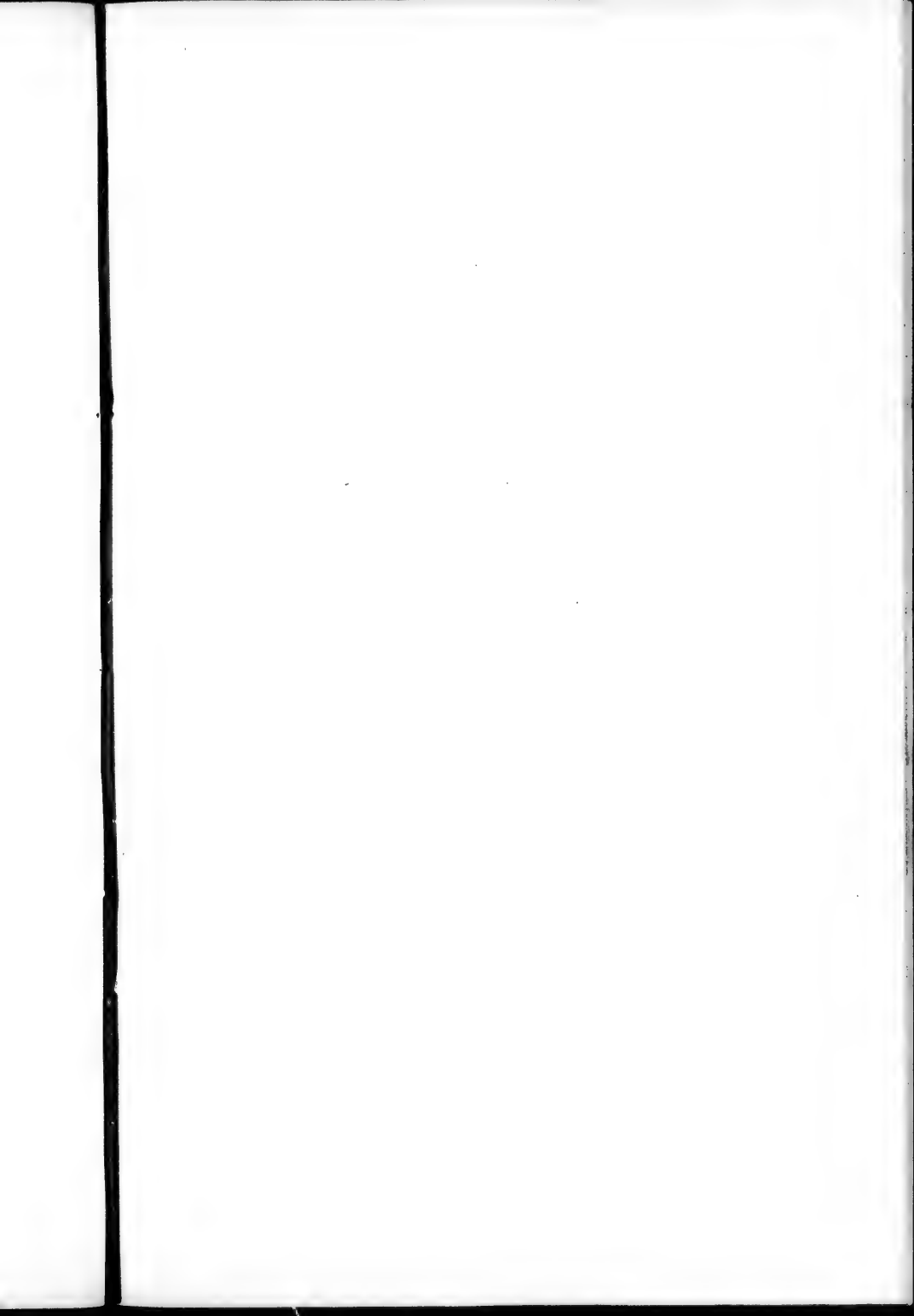
"What even," he asked, "are sea-otter skins by the side of that produced by the sea, incalculable in amount, which contributes to the sustenance of the human family?"

The following from the Report of the Governor of Alaska, 1887, supports Mr. Sumner in his opinion that the fisheries of Alaska were the most important acquisition under the Treaty of 1867:—

Report, Governor
of Alaska, for fiscal
year 1887, p. 22.
"United States"
Congressional
Reports relating to
Alaska," Washing-
ton, 1889.

"When the United States' Government purchased Alaska for 7,200,000 dollars, it did not, in my opinion, pay more than a fraction of what the territory would actually be worth were every other natural resource or element of wealth than its cod banks wiped completely out of existence. I make this assertion with the full knowledge that it is more than likely to subject me to the ridicule of those who cannot understand why this, together with the other great natural resources of the territory, after the lapse of twenty years, is still in the infancy of its development. Ever since the transfer a studied and determined effort has been made to imbue the general public, as well as the Government, with the belief that there is nothing of value in Alaska save its fur-bearing animals. Agents of the Government, sent out to examine and report upon its resources, instead of honestly performing the service for which they were paid, have, in the interest of a Corporation into whose service they drifted from that of the Government, spread broadcast statements concerning the climate and undeveloped resources of Alaska which they knew were utterly false, but which, according with a preconceived public opinion born of ignorance, were generally accepted as true. It has taken long years of patient and persistent endeavour on the part of the true friends of Alaska to even partially dispel the erroneous idea thus imposed upon the public mind, but, despite the efforts of her detractors to prevent it, she is gradually but surely emerging from the long night of misrepresentation into the dawn of a permanent and glorious prosperity.





"Commerce.

"The commerce of Alaska is at present such only as grows out of and is intimately connected with its fisheries, fur trade, and mining interests. Its extent may be inferred from the following carefully estimated statement of the market value of the products of her several industries the present year:—

				Dollars.
Fur trade	..	..	..	2,500,000
Gold (bullion and dust)	..	..	..	1,350,000
Fisheries	..	..	..	3,000,000
Lumber and ivory	..	..	..	100,000
Total	..	..	..	6,950,000

Report, Governor of Alaska, for fiscal year 1887, p. 28.
"United States"
 Congressional Reports relating to Alaska," Washington, 1889.

"The indications are that the output of gold will be trebled, if not quadrupled, the coming year, while there is every prospect that a large amount of capital will be added to that already employed in the fisheries. The fur trade is at its maximum, and aside from the fur-seal industry may be expected to diminish in volume just in proportion to the development of the other natural resources of the territory.

"Undeveloped Resources.

"Practically, the natural resources of Alaska are in the infancy of their development; in fact, all her elements of wealth, aside from the fur trade, can more properly be written of under this caption than any other. At least nine-tenths of her gold bullion this year came from her one developed mine of mineral-bearing quartz, which is now being supplied with mill facilities that will enable it to more than double its annual product of precious metal. The mineral-bearing belt or ledge in which this mine is located gives certain promise of the speedy development of a number of others equally as large and productive, while from all parts of the territory come reports of valuable discoveries, both of gold and of silver. The prospective wealth of Alaska's almost interminable forests of spruce-pine, cedar, hemlock, &c., can scarcely be over-estimated; in time there will come an agricultural and horticultural development that will put to shame the oft-repeated assertion of her detractors that 'no crops can be grown in Alaska;' her grazing lands will be utilized to the extent at least of supplying a home market, no matter what proportions it may assume, with the choicest beef; her fisheries are practically inexhaustible, while in her shaggy-breasted mountains will be found nearly every variety of mineral adapted to the wants of commerce or the uses of mankind. With at least the colour of gold in the bars of her every creek and river, and in the sands on the shores of her extensive coast-line, washed down from the 'mother lodes' located in her towering mountain ranges, with her coast and inland waters, from the southern boundary of the Polar Sea, swarming with numerous species of the best food fishes, her illimitable forests of valuable timber, her

Ibid, p. 26.

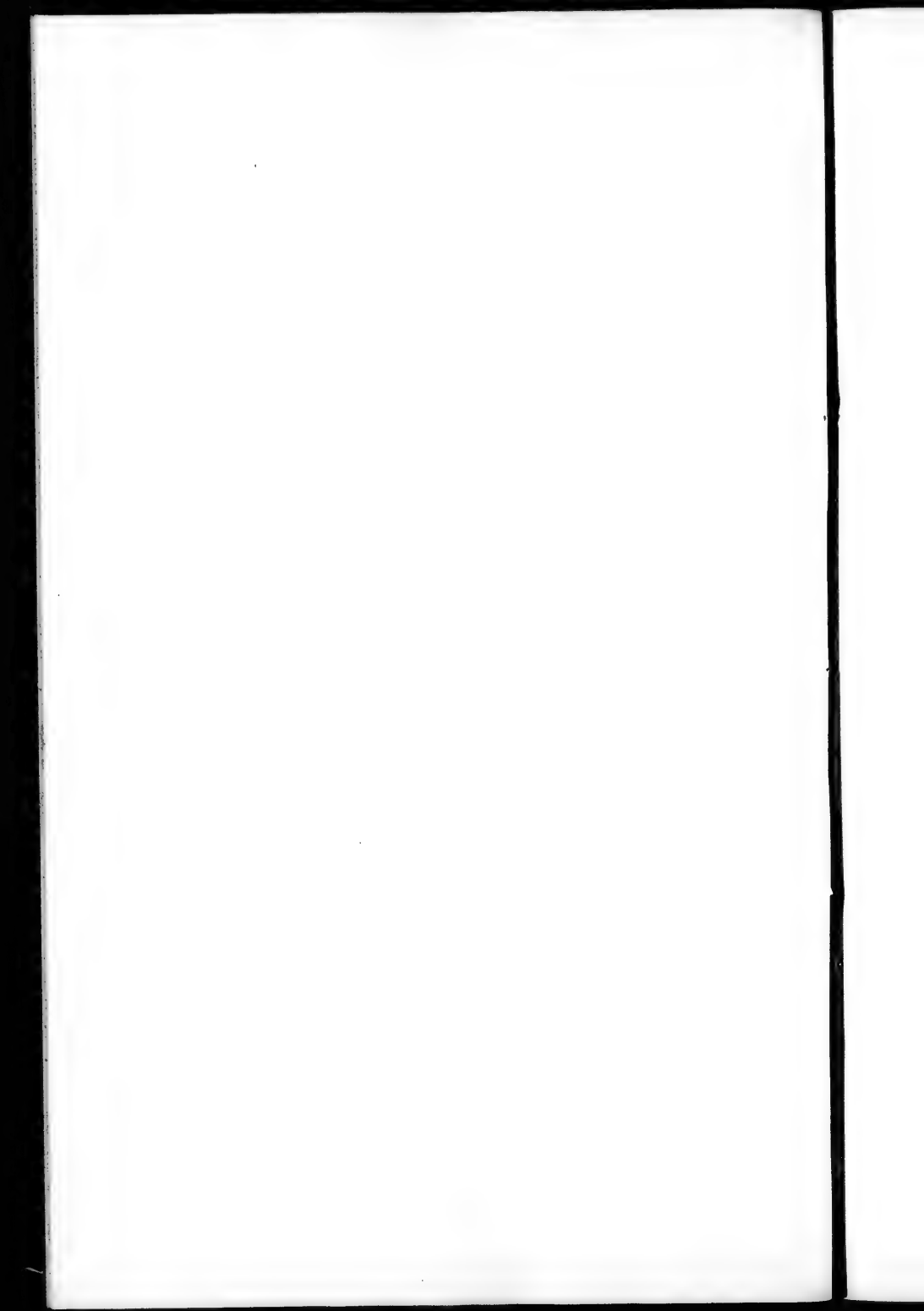
great seams of coal, mountains of iron, and wide area of grazing lands, who shall undertake to definitely estimate or limit the value of Alaska's undeveloped resources?"

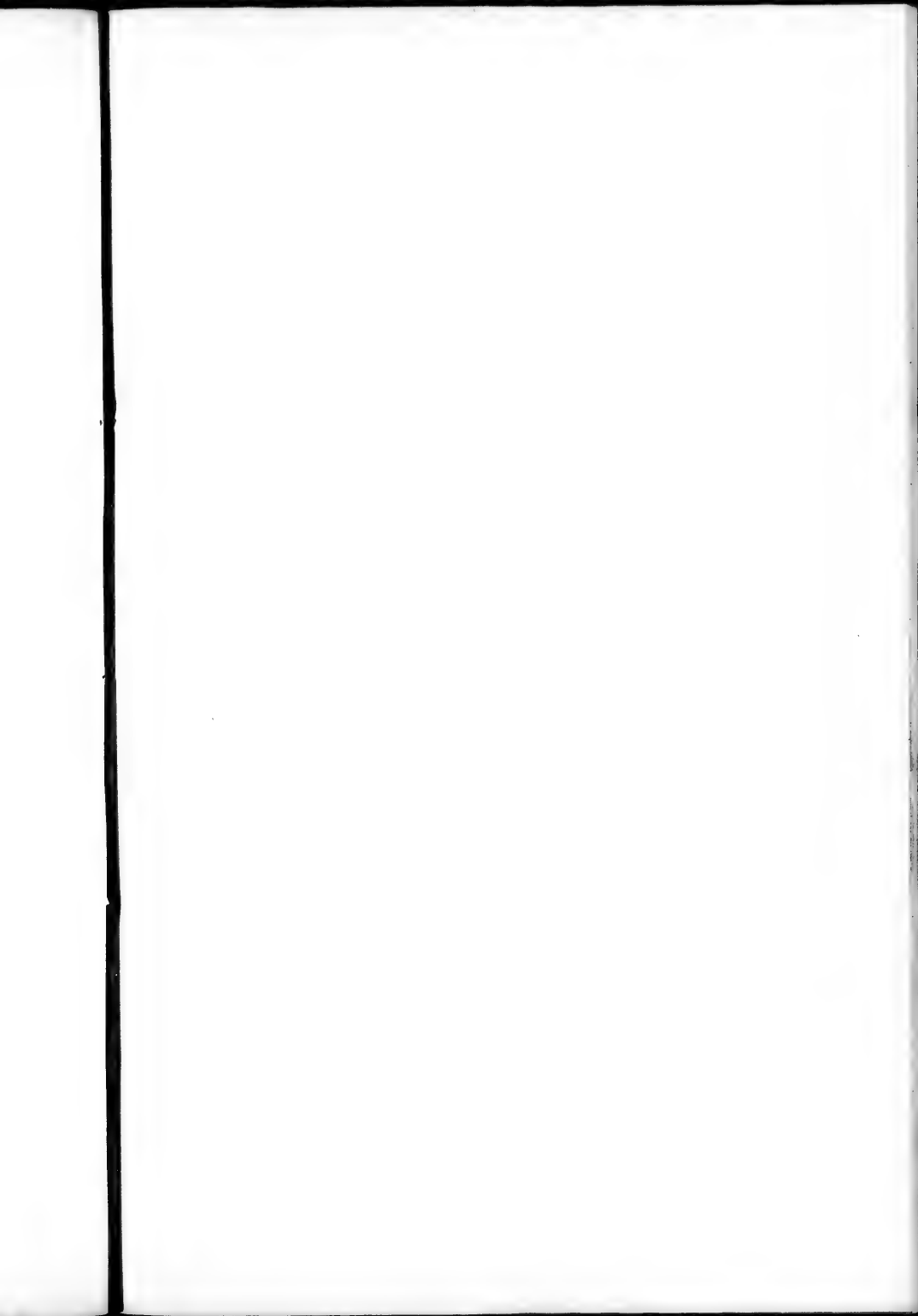
In a letter written by Dr. W. H. Dall, to correct some statements attributed to him in the discussion arising from the paper by Mr. W. Palmer, read before the Biological Society at Washington, and elsewhere referred to, he says:—

Ignorance of value of fur-seal at the time of the Alaska purchase.

"Forest and Stream," November 5, 1891.

"I said that, 'in 1866' (not 'in the early days of the industry'), I purchased first class fur seal-skins at 12½ cents a-piece, that being the price at which they were sold by the Russians. The point of this observation lies in its application to the oft-repeated statement that, as Mr. Palmer says, 'little stress was laid upon the fact that fur-seals were found in abundance' at the time of the purchase of the territory by the United States. No stress could reasonably have been laid upon it, since 100,000 seals would at that time have been worth only some 12,500 dollars, which would have hardly paid for the trouble of taking them. Of course, almost immediately afterwards, this was no longer true."





APPENDIX.

An Examination of Russia's Claim to Title in America.

The United States' Case advances the following propositions:—

1. That by first discovery and occupation, the shores and islands of Behring Sea, the Aleutian chain, and the Peninsula of Alaska became, probably as early as 1800, an undisputed part of the territory of the Russian Empire, but that the shores and adjacent islands of the American continent south of latitude 60°, as far as California, were, during the latter part of the eighteenth and the first quarter of the nineteenth century, the subject of conflicting claims on the part of Russia, Great Britain, Spain, and the United States. United States' Case, p. 20.

It is asserted, or implied, on the part of the United States, that, during the latter part of the eighteenth and early years of the nineteenth centuries, there were permanent Settlements, forts, or trading posts on the eastern mainland of Behring Sea; but, as a fact, there was only one Settlement there—on Bristol Bay—up to 1879, as Mr. Blaine states in his letter of the 17th December, 1890. Ibid., p. 25.

It is said also that "the shores and islands of Behring Sea . . . became probably as early as 1800 an undisputed part of the territory of the Russian Empire."

But it will be seen that in another part of the United States' Case it is admitted that at the present time—

"The shores of Behring Sea are but thinly populated, the native inhabitants of those now belonging to the United States being Esquimos and Aleuts." Ibid., p. 15.

In the observations inclosed in Mr. Adams' letter to Mr. Middleton of the 22nd July, 1823, it is stated:—

"It is assumed as an indisputable fact that before the third and last voyage of Captain Cook no European Settlement had been formed on the north-west coast of the American continent north of Cape Mendicino, or of the 40th degree of north latitude." "American State Papers, Foreign Relations," vol. v, p. 443.

To establish that the shores and islands of Behring Sea became Russian as early as 1800, the voyages of discovery of Behring and Cook and others are mentioned. Russia's claim to title.
United States' Case, pp. 20, 22, 24, 27, 29.

The authorities show merely the result of Behring's first voyage was to outline rather vaguely the extreme eastern coast of Asia. Ibid., pp. 20-22.

That of 1740 got no further than Kamtchatka.

The result of the voyage of 1741 was the discovery, and nothing more, of the American coast.

Bancroft, "Alaska,"
p. 174.

No authority suggests the establishment of any *permanent* Settlement even on the Aleutian Islands, whither hunters and traders followed the discoverers in search of the sea-otter.

United States'
Case, p. 24.

It is, however, suggested by the United States that Cook's discoveries were in the interest and on behalf of the Russians.

Ibid.

In a foot-note the United States' Case contains the following sentence from this work, when touching on Cook's discoveries. Referring to the Russians, it is said :—

"They will undoubtedly make a proper use of the advantages we have opened to them by the discovery of Cook's River (Inlet)."

This, it is said in effect, contemplated the occupation and settlement of the islands and coast by the Russians.

Cook's "Voyages
round the World,"
vol. iii, p. 371.

Cook, as will be seen in the page from which this note is taken, had reference to Russian expeditions for the purpose of discovery only.

Alluding to one of these and its failure, Cook says :—

"This was the last expedition undertaken by the Russians for prosecuting discoveries to the eastward ; but they will undoubtedly make a proper use of the advantages we have opened to them by the discovery of Cook's River."

Captain King, who continued the journal of Cook, from which the quotation is made, says of Cook's work :—

Ibid., p. 50.

"He afterwards explored what had hitherto remained unknown of the western coast of America, from the latitude of 43° to 70° north, containing an extent of 3,500 miles ; ascertained the proximity of the two great continents of Asia and America ; passed the straits between them, and surveyed the coast on each side to such a height of northern latitude as to demonstrate the impracticability of a passage in that hemisphere, from the Atlantic into the Pacific Ocean, either by an eastern or a western course. In short, if we except the Sea of Amur and the Japanese Archipelago, which still remain imperfectly known to Europeans, he has completed the hydrography of the habitable globe."

British Case, p. 15.

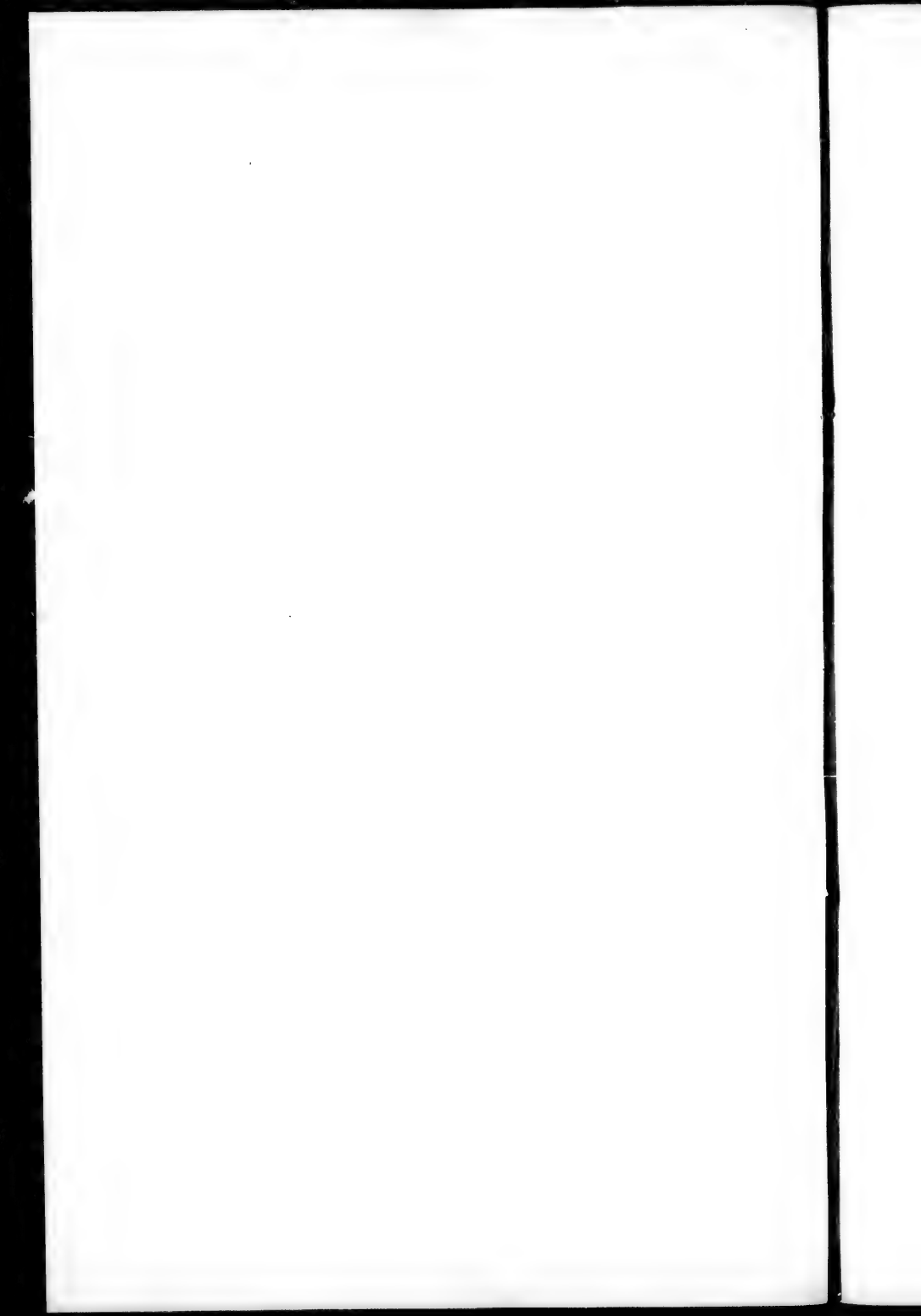
In the British Case, it is made clear that Cook's mission was not in the interest of Russian authority or jurisdiction.

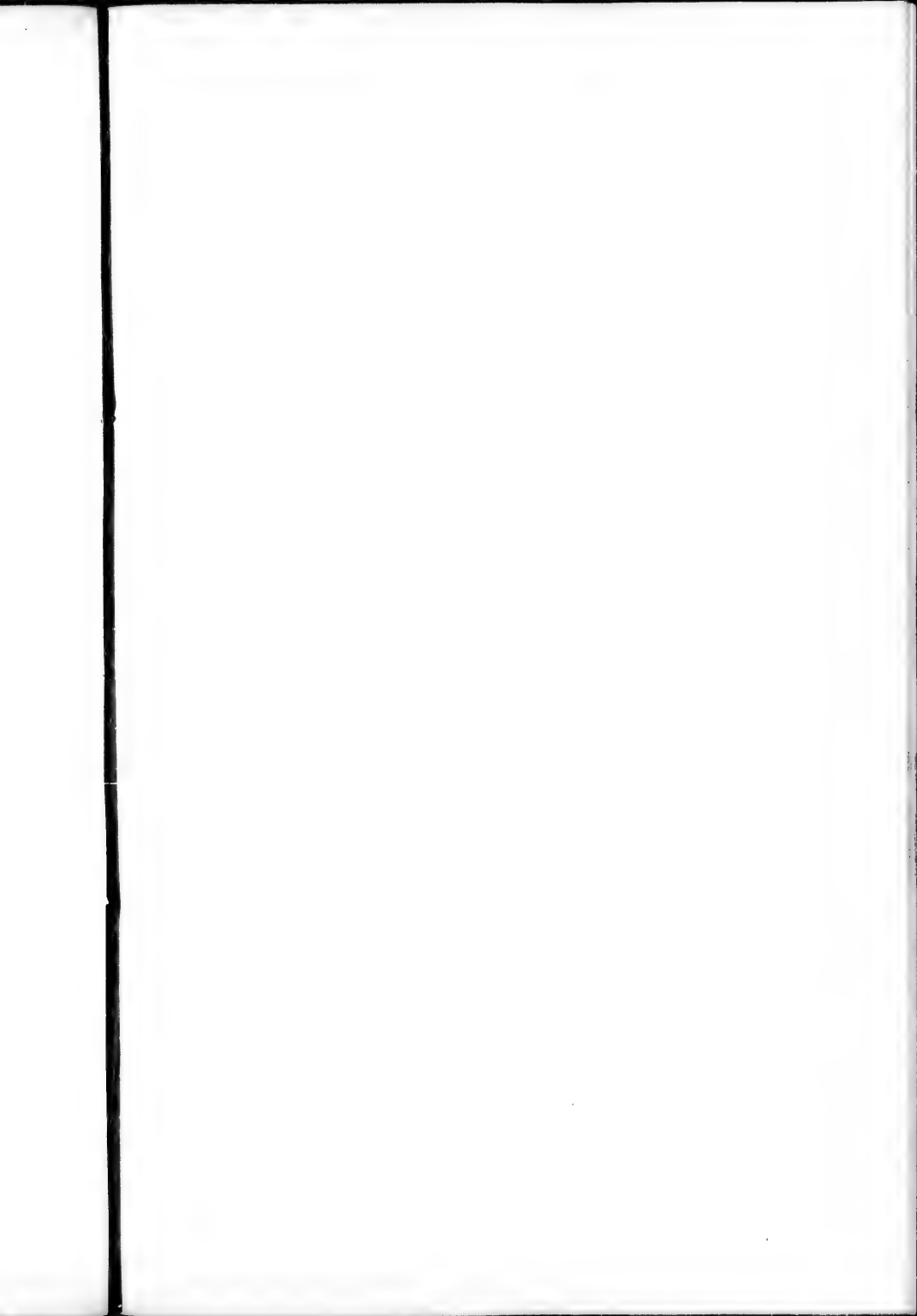
He had been dispatched by the English Government with instructions to make a thorough search for any navigable passage "from the Pacific to the North Atlantic" as far as latitude 65° north, and further if required.

His instructions added :—

Cook's "Voyages
to the Pacific
Ocean," 1776-80.
London, 1874.

"You are also, with the consent of the natives, to take possession, in the name of the King of Great Britain, of convenient situations in such countries as you may discover that have not already been discovered or visited by





any European Power . . . , but if you find the countries so discovered are uninhabited, you are to take possession of them for His Majesty by setting up proper marks and inscriptions as first discoverers and possessors."

It was in 1778 (not 1779, as stated in the United States' Case) that Cook reached the American coast of the North Pacific.

The United States' Case asserts that no claim of territory was made by the Government of Great Britain on this voyage; but it is shown in the British Case that possession of the coast was taken by Cook for his country, and under the above instructions.

The Map showing British territory as discovered by Cook is in the library of the British Museum.

In the observations upon the claim of Russia to territorial possessions on the continent of North America, and in earnest refutation of such a pretension, communicated with Mr. Adams' letter to Mr. Middleton of the 22nd July, 1823, referring to Cook's last voyage, it is said:—

"The account of that voyage was published under the direction of the British Government in 1784. In the introduction to it, written by Dr. Douglass, Bishop of Salisbury, among the advantages enumerated as derivable to all mankind from the discoveries which had been made in the progress of that undertaking, was the opening of a valuable trade in furs from the north-west coast of America, and particularly from King George's or Nootka Sound to China."

United States' Case, p. 24.

British Case, p. 15.

For Map, see Appendix to British Counter-Case.

"American State Papers, Foreign Relations," vol. v, p. 443.

The references in the United States' Case do not sustain the claim of Russia's early title.

On the contrary, Vivien de St. Martin, referring to the subject of Russian establishments generally, shows they were temporary and "expressly for the purpose of hunting the sea-otter, blue fox, fur-seal, beaver, seal pup, and other animals bearing precious furs."

St. Martin mentions no case of any establishment outside of the islands in the case of Behring Sea.

Tikhmenieff, the Russian historian, and Sir C. Bagot's Map show the complete absence of trading posts in Behring Sea, and their temporary character elsewhere.

Referring to the object of Russian occupation of the islands on the American coast, Elliott, in his Report on "Alaska" (1874, p. 9), said:—

"The Russians did not live here as a people, but as a Company of fur traders only, with a single eye to the getting of skins."

" . . . In 1811, Humboldt, in giving the position of the Russian factories on the coast, said that they were 'nothing but sheds or cabins employed as magazines of furs, and that the term "Russian possession" should not make us think that the country was really a Russian province.' . . . "

"Nouveau Dictionnaire de Géographie Universelle," vol. i, p. 56.

"Congressional Globe," Part I, p. 186, 40th Cong., 2nd Sess., 1867-68. Washburn of Wisconsin.

The character of the Settlements or establishments referred to by Coxe, who is cited in the United States' Case, may be judged by the following information from Vancouver :—

The Russian Settlement in Kodiak.

"Account of the Russian Discoveries between Asia and America," by William Coxe, London, 1803, p. 345 *et seq.*

This Settlement occupied a space of about 120 square yards, fenced in by a paling of small spars of pine and birch about 12 feet high, a very defenceless barricade even against Indians, as the whole could be burnt down from the outside, as could also the houses within the fence, the whole being built with wood and covered with thatch. The largest house, in shape of a barn, was about 35 yards square, and 10 or 12 feet high, accommodating thirty-six Russians, who, with their Commander, comprehended the total number of Russians at the station. Two platforms, 8 feet wide, 8 or 9 inches from the ground, from end to end each side of the room, served as sleeping places. These were divided into stalls, like those in the stables of inns, by posts only, on which posts hung the spare clothes and arms and accoutrements of the Russians.

The Settlement had thus been established twelve years, but the land was not cultivated, and they had no domestic animals. All they had to offer us was cold boiled halibut, and raw dried salmon intended to be eaten with it in place of bread.

There were also about twenty-three other houses or huts, in one of which the Commander resided. The others were the residences of natives who were the companions or attendants of the Russians, and stores and a school for educating the Russian children in the Russian language and religion.

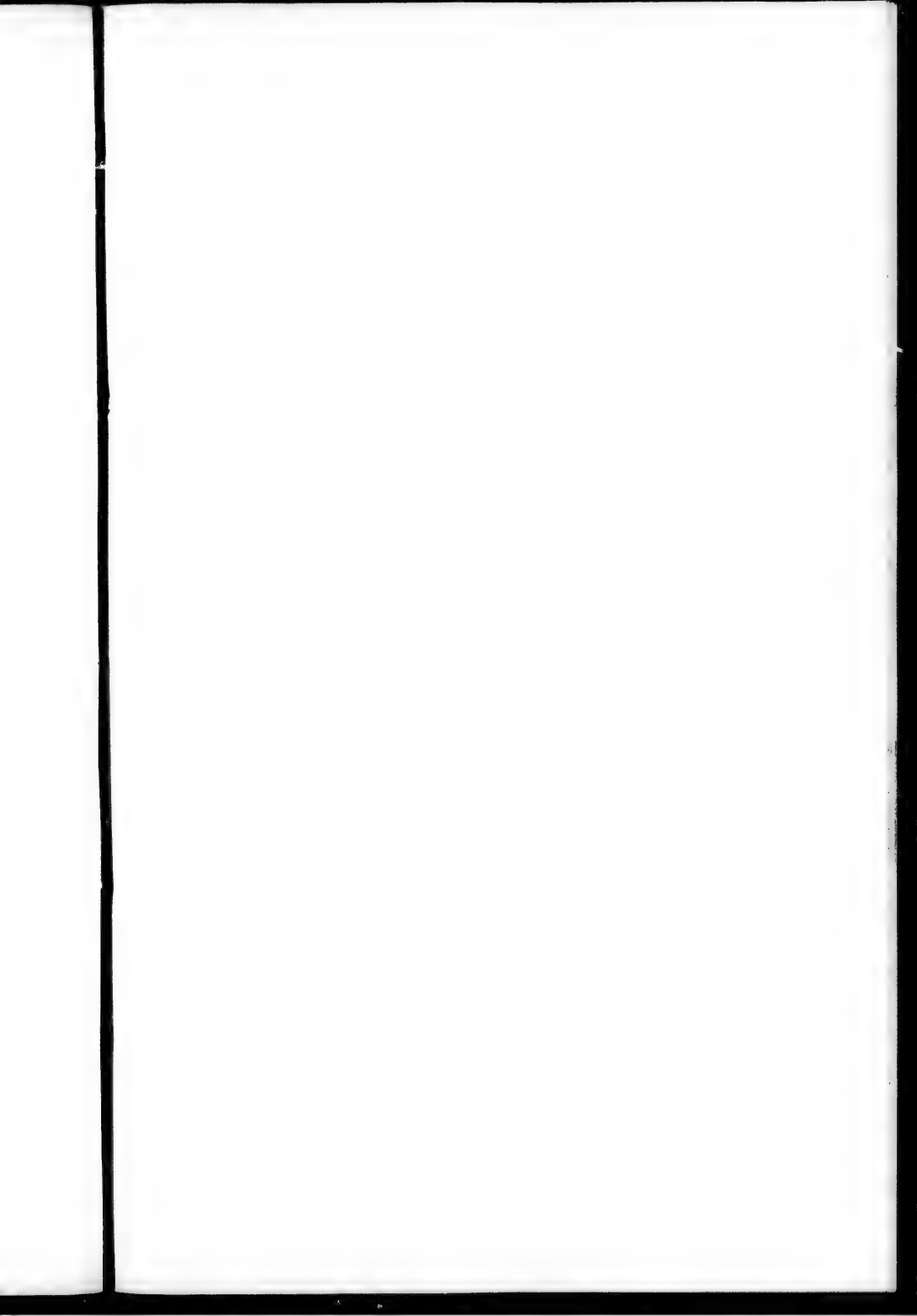
A vessel of 60 or 70 tons, belonging to the establishment, was hauled up on the beach above water-mark, and was much out of repair. She had been in that position two years, and was to be there two years more, when the Settlement would be relieved by another party. The whole of the armour of the Settlement consisted of two small brass swivel-guns, each carrying about 1 lb. of shot, mounted on a balcony of a large house, a similar piece of ordnance at the door of the entrance, a dozen muskets, hanging apparently in constant readiness in the great room, two or three pistols, and a few short daggers.

The Russian Settlements seem to have been mostly on islands, and, whether on islands or the mainland, to have been very flimsy.

Referring to Russian establishments, the most eastern part being at Port Etches, on Prince William Sound, Vancouver wrote :—

"He clearly understood that the Russian Government had little to do with these Settlements; that they were solely under the direction and support of independent mercantile Companies. . . . Not the least attention whatever is paid to the cultivation of the land or to any other object but that of collecting furs, which is principally done by the Indians."

See also British Case, pp. 20, 21.



Mr. Adams, writing to Mr. Smith, Secretary of State, gives an account of a conference with Count Romanzoff respecting Russian claims on the North-West Coast of America:—

"If such is the experience of this Government, the difficulties must be obviously much greater in preventing a trade so distant with wandering savages, scattered along a coast over several degrees of latitude, having no ports or Custom-houses, not even permanent dwelling-places from which it would be possible to collect evidence of any transgression of the law."

"American State Papers, Foreign Relations," vol. v, p. 443.

It may be added that in the observations communicated with Mr. Adams' letter to Mr. Middleton of the 22nd July, 1823, it is said:—

"The only place on the north-western American coast Ibid. where Captain Cook found a Russian Settlement was at Onalashka, one of the Aleutian Islands; the principal person of which Settlement, Ismaeloff, and the other Russians whom he met there, 'affirmed that they knew nothing of the continent of America to the northward.'"

In an extract from the letter of Count Fernan Nunez to M. Montmorin, Secretary of the Foreign Department of France, Paris, 16th June, 1790, the following appears:—

"I have the honour to address you with this a faithful Ibid., p. 444. extract of all the transactions which have hitherto passed between my Court and that of London on the subject of the detention of two English vessels which were seized in the Bay of St. Lawrence or Nootka, situated in the 50th degree to the north of California, and which were afterwards taken to the port of St. Blas. Annual Register, p. 301, State Papers.

"You will observe by this relation:

"1. That by the Treaties, demarcations, takings of possession, and the most decided acts of sovereignty exercised by the Spaniards in these stations from the reign of Charles II, and authorized by that Monarch in 1692, the original vouchers for which shall be brought forward in the course of the negotiation, *all the coast to the north of the Western America on the side of the South Sea, as far as beyond what is called Prince William's Sound, which is in the 61st degree, is acknowledged to belong exclusively to Spain.*

"2. That the Court of Russia, having been informed of this extent of our boundary, assured the King, my master, without the least delay, of the purity of its intentions in this respect, and added 'that it was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another Power, should have been disobeyed.'

"By these papers it is demonstrated:

"That, at that time, the claim of Spain to exclusive possession of the north-west coast extended beyond Prince William's Sound, in latitude 61°.

"That the Court of Russia had been informed of this extent of the Spanish boundary; had disclaimed any intention of interfering with it, and added expressions of its sorrow that its repeated orders to prevent the subjects of Russia from violating the territory belonging to another Power had been disobeyed.

"So far was Russia, in 1790, from asserting any claim whatsoever to territory on the continent of North America."

In the Confidential Memorial on the North-western question, prepared in 1823 by Mr. Middleton, it is observed:—

American State Papers, Foreign Relations, vol. v, p. 449.

"It appears, then, that the position of Russia relative to her rights upon the north-west coast of America had not at all changed since 1790. The Russian-American Colony had enjoyed its exclusive rights granted by the Emperor Paul. It had prospered and formed an establishment in the limits marked out by the Ukase of 1799. It had, however, never pretended to exclude other nations from a commerce shared with them for so long a time; but it saw with jealousy its profits diminished by this rivalry. In fine, it took a violent part, and at length obtained by its solicitations the Ukase of the 4th (16th) September, 1821."

British Case, Appendix, vol. i, p. 88.

B. 442, Foreign Relations, vol. i. A. 444, 445. A. 452.

In 1867 Mr. Sumner, in the United States' Senate, referred to the Russian Government in America as "nothing but a Fur Company whose only object is trade."

To further support Mr. Adams in 1823, and Mr. Sumner in 1867, in their conclusion that there never was a permanent Russian Settlement on the American continent, and that the Settlements which occurred at various times, either on any part of that coast or on islands near it, down to 1867, were mere "villages" or "factories," Bancroft may be cited.

Dealing with the Russian attempt in 1783 to utilize the knowledge obtained through Cook to extend their operations to the mainland coast of America, and to the failure of this attempt, Bancroft says:—

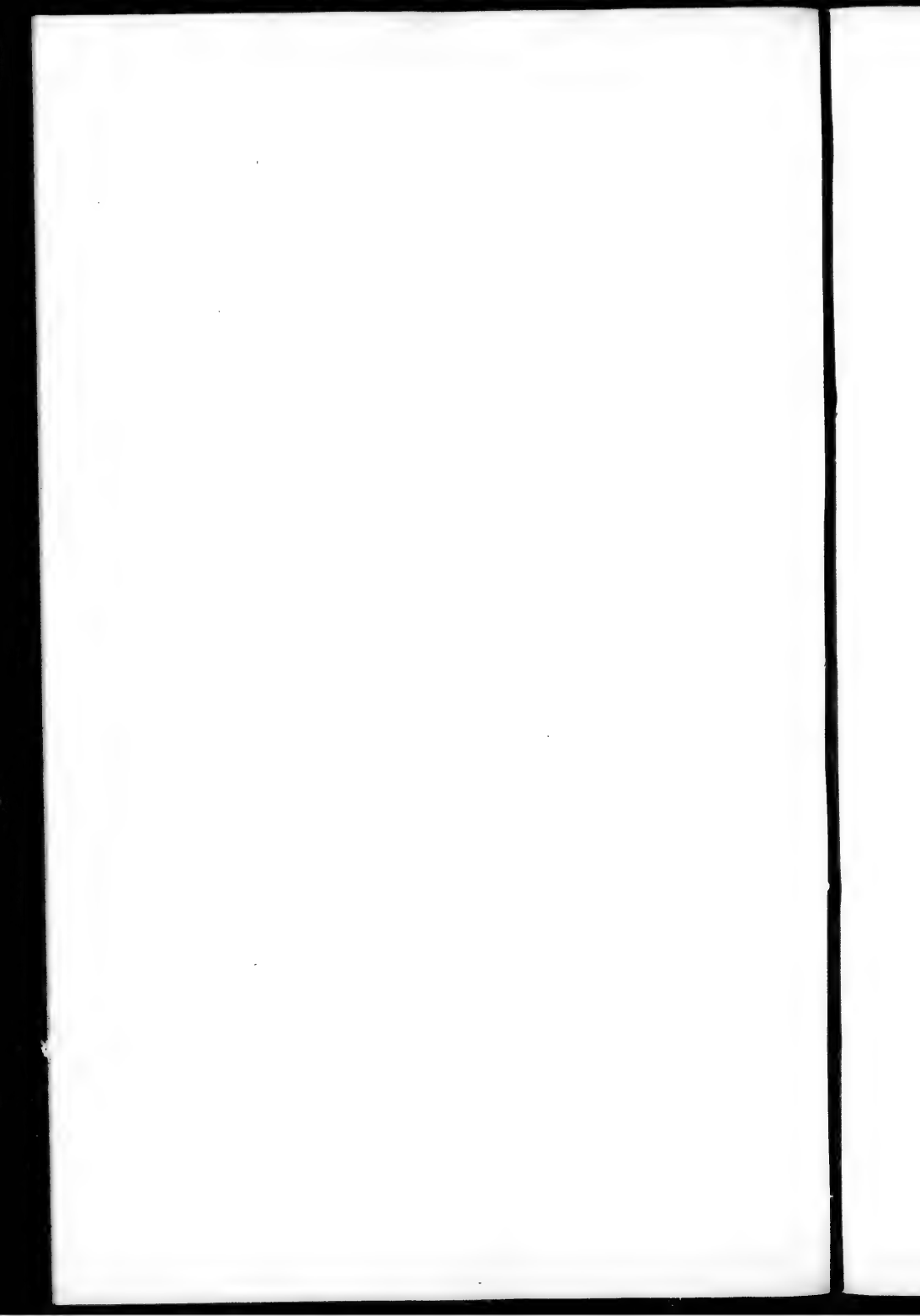
Bancroft, "Alaska," pp. 190, 191.

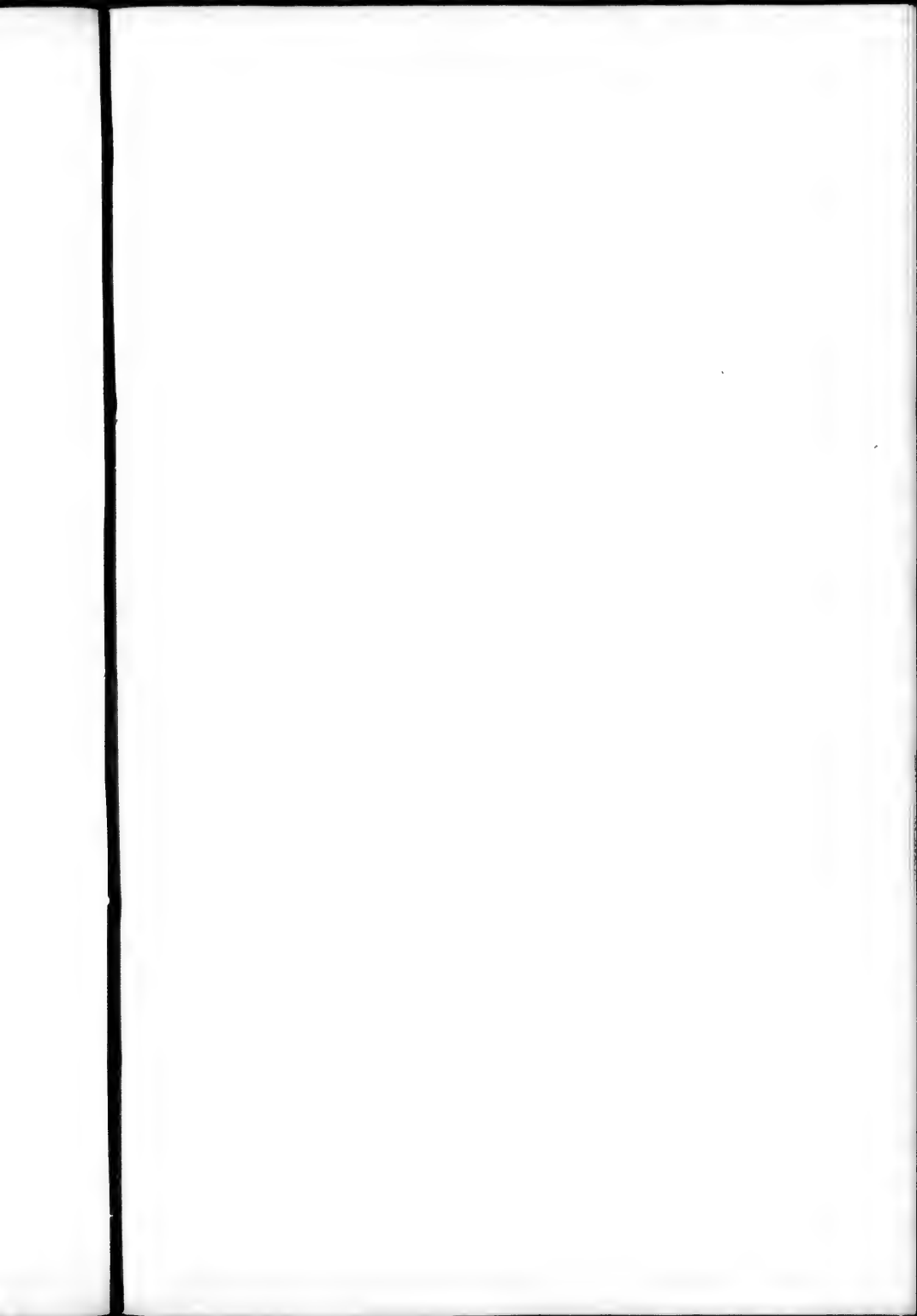
"Thus unfortunately ended the attempt of the Russians to gain a foothold upon the continental coast of America. . . . This failure to extend their field of operations seriously checked the spirit of enterprise which had hitherto manifested itself among the Siberian merchants, and for some time only one small vessel was dispatched from Siberia for the Aleutian Islands."

Sumner, when referring to Russian America in 1867, spoke as follows:—

British Case, Appendix, vol. i. pp. 47, 48.

" . . . These general considerations are reinforced when we call to mind the little influence which Russia has thus far been able to exercise in this region. Though possessing dominion over it for more than a century, this gigantic Power has not been more genial or productive





there than the soil itself. Her Government there is little more than a name or a shadow. It is not even a skeleton. It is hardly visible. Its only representative is a Fur Company, to which has been added latterly an Ice Company. The immense country is without form and without light; without activity, and without progress. Distant from the Imperial capital, and separated from the huge bulk of the Russian Empire, it does not share the vitality of a common country. Its life is solitary and feeble. Its Settlements are only encampments or lodges. Its fisheries are only a petty perquisite, belonging to local or personal adventurers rather than to the commerce of nations. Alexander Humboldt, whose insight into geography was unerring, in his great work on 'New Spain,' published in 1811, after stating that he is able from official documents to give the position of the Russian factories on the American continent, says that they are 'nothing but sheds and cabins employed as magazines of furs.' He remarks further that 'the larger part of these small Russian Colonies do not communicate with each other except by sea,' and then putting us on our guard not to expect too much from a name, he proceeds to say that the new denomination of *Russian America* or *Russian possessions* on the new continent must not make us think that the coasts of Behring's Basin, the Peninsula of Alaska, or the country of Tchuktschi have become a *Russian province*, in the sense given to this word when we speak of the Spanish provinces of Sonora or New Biscay. (Humboldt, 'Essai Politique sur la Nouvelle-Espagne,' Tom. I, pp. 344, 345.) Here is a distinction between the foothold of Spain in California and the foothold of Russia in North America, which will at least illustrate the slender power of the latter in this region.

"In ceding possessions so little within the sphere of her Empire, embracing more than 100 nations or tribes, Russia gives up no part of herself, and even if she did, the considerable price paid, the alarm of war which begins to fill our ears, and the sentiments of friendship declared for the United States, would explain the transaction."

The British Case deals with the extent of Russian *British Case*, Settlements and the nature of the occupation in this pp. 20, 23, 32-35 region down to as late a period as 1867.

The establishments of Shelikoff, "on various parts of the American continent," were of a temporary and evanescent character. See generally *British Case*, p. 18, and see pp. 22, 23.

In 1791, when Baranoff was said to have been in command "of all the establishments of the Shelikoff-Golikoff Company," Kadiak and a few of the smaller adjacent isles only were claimed to be in the possession of the Company. Bancroft, "Alaska," p. 321.

The people of the Alaska Peninsula would not permit Russians to settle among them. Ibid.

The visit to Yakutat, in 1788, is referred to in the United States' Case as an instance of Russian "occupation."

British Case, p. 18. Bancroft, however, refers to this as a visit of explorer, made subsequent to similar work under English or French voyagers.

United States' Case, p. 26. To prove the occupation of the coast from "Prince William Sound to the north of the Columbia River," it is asserted that a vessel was launched, in 1794, from the shores of Prince William Sound.

British Case, p. 20. But Vancouver was then actually surveying this coast and Sound.

United States' Case, p. 28. While no evidence of any permanent Russian settlement up to this time on the mainland of the continent is given, it is, however, stated that "the most important step taken by Russia to permanently establish her authority over the island and adjoining shores of the north-west coast of the continent was the founding . . . of New Archangel (afterwards Sitka)."

It has been and is insisted on behalf of Great Britain that no occupation of the American shores of Behring Sea occurred previous to 1824 and 1825, even if since.

See British Case, p. 33.
United States' Case, p. 35.

The United States' Case endeavours to controvert the position and argument of Mr. Adams on behalf of the United States in 1822 and 1824. It is argued, in effect and seriously, that the occupation on the part of Russia from Behring Sea (67° north latitude) down to the mouth of the Columbia River (47°), a distance of about 2,800 miles, took place by reason of the founding of a "trading post," a "fortress," and "seat of government" at the Island of Sitka, 57° north.

Sitka was not founded in 1802, as stated.

"Alaska," pp. 404-409.

In that year the Russian "establishment" there was destroyed by fire, and the Russians were massacred by the natives, assisted by deserters from a United States' vessel, the "Jenny."

Ibid., p. 446.

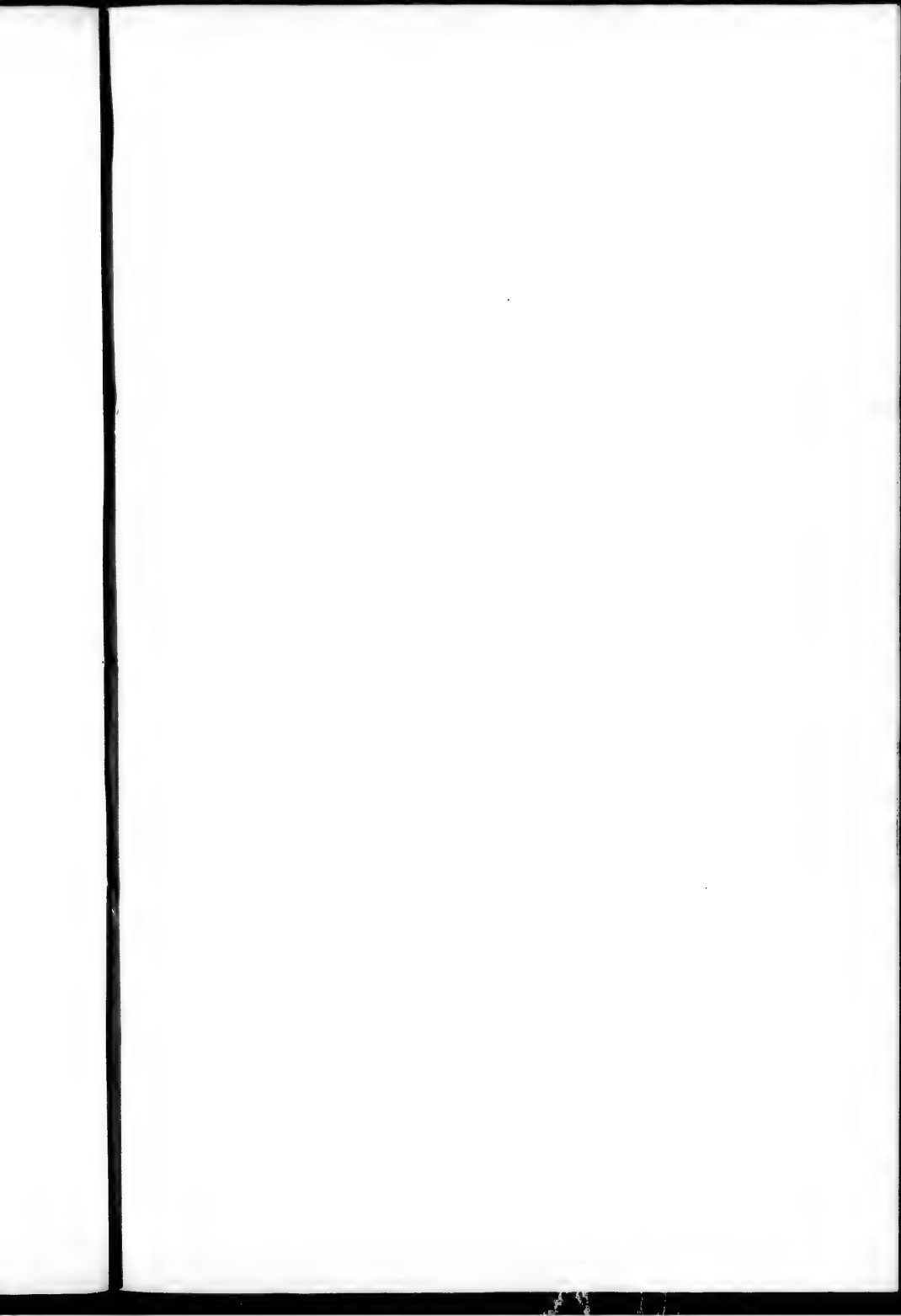
The authority on the mainland said to have been exerted by virtue of the Government at Sitka was extremely limited, since Resenoff, writing in 1806, said, after visiting Sitka:—

"These islands would be an inexhaustible source of wealth were it not for the Bostonians, who undermine our trade with China in furs, of which they obtain large numbers on our American coast. . . . I take the liberty, as a faithful servant of your Imperial Majesty, of declaring my opinion that it is very necessary to take a stronger hold of this country. It is certain that we shall leave it empty-handed, since from fifteen to twenty ships come here annually from Boston to trade."

At as late a period as 1819 Golovnin, reporting on the nature of the operations of the Russian-American Company and its organization, said:—

Ibid., p. 531.

"Three things are wanting in the organization of the Company's Colonies: a clearer definition of the various officers, a distinction of rank and a regular uniform, so that foreigners visiting these parts may see something indicating the existence of forts and troops belonging to the Russia sceptre—something resembling a regular garrison.



At present they can come to no other conclusion than that these stations are but temporary fortifications erected by hunters as a defence against savages.

"Fort Ross" (referred to in the United States' Case), a few miles north of the Bay of San Francisco, was simply the name of the Ross Colony at that time. United States' Case, p. 28.

The references in the United States' Case do not show this Colony had anything in common with the hunters or traders to the north.

Vivien de St. Martin, to whom frequent reference is made in the United States' Case, says, when referring to all of these Russian Company establishments, that their sole object was the "rich commerce in furs." Vivien de St. Martin, p. 56.

Touching the claim made by Russia in 1810 to the coast as far as the Columbia River and the Colony at Fort Ross, he says:—

"In 1807 the Company attempted to establish itself at the mouth of the River Columbia, and in 1812 at the port of Bodega, a few leagues from the celebrated Bay of San Francisco on Spanish territory, after having, however, informed the authorities that in so far as they themselves (the Russians) and the Kadiak Indians were concerned the establishments were solely for the purpose of fishing."

The statement in the text of the United States Case is based upon a passing remark in a letter from Mr. Adams to Mr. Smith, Secretary of State; but so unsubstantial did he deem the pretension that on the 5th September, 1810, he thus refers to it:— United States' Case, p. 29.

"I do not imagine that it is the Count's serious intention to claim to the mouth of the Columbia River, but perhaps the fixing upon a boundary may present difficulties to the proposed Convention which had not been anticipated." Adams to Smith, September 5, 1810, "American State Papers," vol. v, p. 442.

In this despatch Mr. Adams shows that the claim was based solely upon a Map which included the whole of Nootka Sound, and down to the mouth of the Columbia River, as part of the Russian possessions.

There is no evidence that such a claim was ever pressed.

After dealing with the evidence of Russian discoveries and Russian commerce in the region under consideration, the United States' Case is led to admit that British, Spanish, and American competition existed in both respects. United States' Case, p. 29.

Referring generally to Russia's share in America and the conflicting claims of the different nations, Bancroft says:—

"In the great seizure and partition of America by European Powers there was no reason why Russia should not have a share. She was mistress in the east and north, as were France and Spain in the west and south; she was as grasping as Portugal, and as cold and cruel as England; and because she owned so much of Europe and Asia in the Bancroft, "Alaska," p. 1.

Arctic, the desire was only increased thereby to extend her broad belt quite around the world. It was but a step across from one continent to the other, and intercourse between the primitive peoples of the two had been common from time immemorial. It was but natural, I say, in the gigantic robbery of half a world, that Russia should have a share; and had she been quicker about it, the belt might as well have been continued to Greenland and Iceland."

United States' Case, p. 34.

The United States' Case, under the heading of the "Russian-American Company," relates a history of this body.

It can hardly be said with accuracy that the history of this Company is "the history of that portion of the globe to which "the attention of the Tribunal of Arbitration is directed," since its proceedings were hidden from other nations, except in so far as they have been revealed by the published accounts of navigators, and the archives transferred by Russia to the United States, and partially published for the first time in the Case under consideration.

Bancroft, "Alaska," p. 317.

Bancroft says that Baranoff "was any day, drunk or sober, a match for the navigator who came to spy out his secrets."

Ibid., p. 391.

Touching, moreover, the statement that officers of the Imperial Navy were in the employ of the Company and enjoined to obey the orders of the Chief Manager, Bancroft says of Talin, a naval officer in the service of the Company, that he was "one who, like all of his profession, was little disposed to heed the Chief Manager's instructions, and when his vessel was lying in Norfolk Sound had threatened to hang Baranoff from the masthead if he dared to show himself on board."

Ibid., p. 392.

It may be added that Bancroft, in a foot-note, recites a letter from Baranoff showing that he only claimed to direct naval officers in voyages of discovery and exploration.

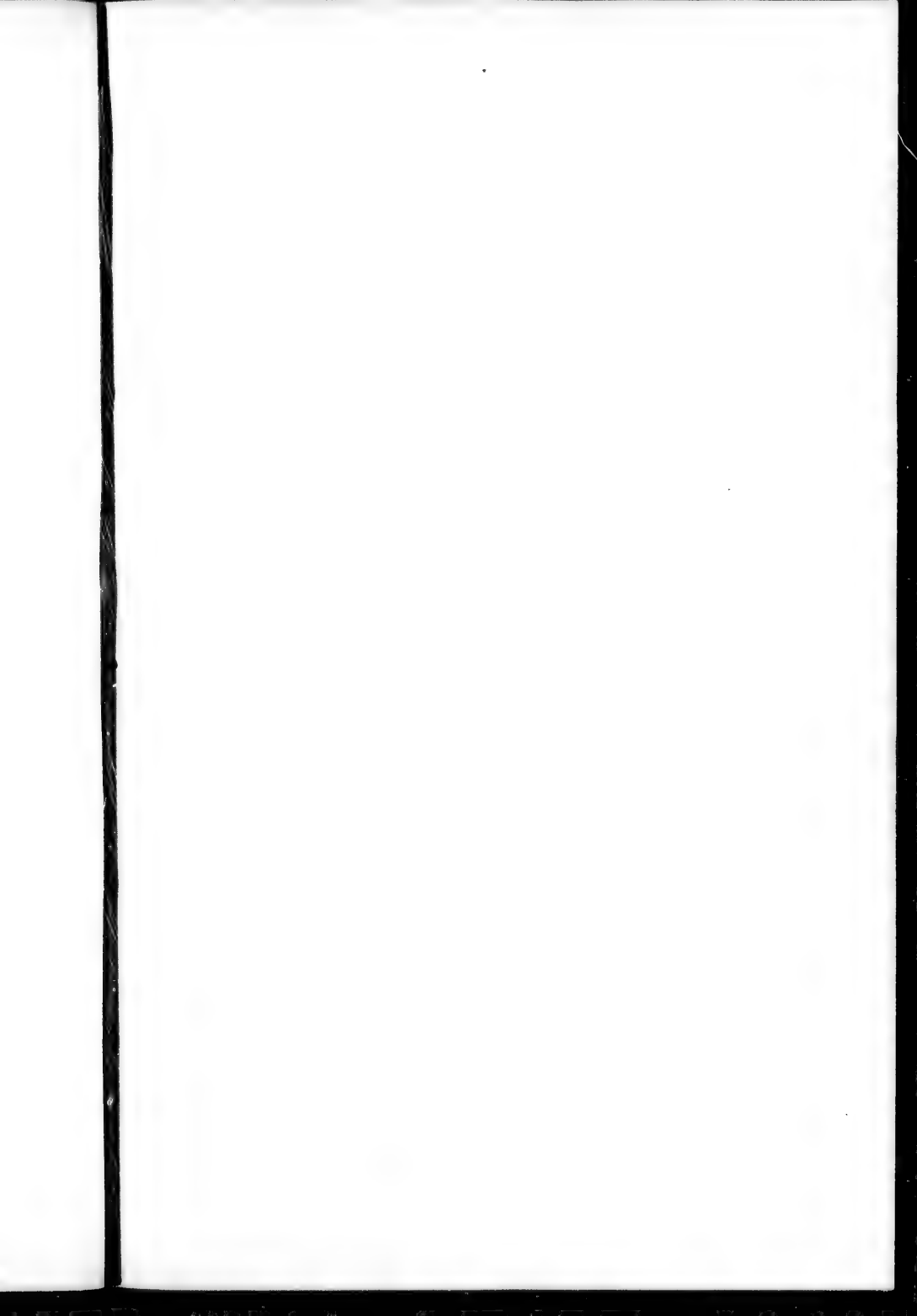
The United States' Case further states that, at an early date, the Manager of the Company was required to be an officer of the navy of high rank. In this letter Baranoff describes himself as a "common trader," and therefore unable to give Talin "the satisfaction of a gentleman."

United States' Case, p. 37.

The statement that the Company administered both government and trade upon the whole of the territory over which it had control requires considerable qualification, as the points at which the Company appeared over that vast coast, from Behring Sea to the southern limit of its territory, were few and far between.

THE SEA-OTTER.

The *sea-otter* was, in the first instance, and continued for many years to be, the principal object of all the Russian expeditions to the region of Behring Sea. The history of the discovery and appropriation of territory was in effect that of the extension of sea-otter breeding and trading, and the safeguarding of these interests.



Bancroft writes:—

"We have seen how the Cossacks were enticed from the Caspian and Black Seas, drawn over the Ural Mountains, and lured onward in their century-march through Siberia to Kamtchatka, and all for the skin of the little sable. And when they reached the Pacific they were ready as ever to brave new dangers on the treacherous northern waters, for the coveted Siberian quadruped was here supplanted by the still more valuable amphibious otter."

"History of Alaska," p. 231.

Again, in another place, the same author sums up the result of his investigations on this subject as follows:—

"The fur of this amphibious animal, the most precious of all peltries, was the attraction that brought to these shores all the adventurous navigators whose exploits have been briefly recorded in the preceding chapters. A few did not engage directly in the fur trade, but all such, with the possible exception of Captain Cook, came because of the operations of the fur-seekers.

"History of the North-west Coast. vol. i, pp. 343, 345

"There were other valuable furs in the country besides that of the sea-otter, which were profitably exported in connection with the latter, but there were none which of themselves would in the early years have brought the world's adventurous traders on their long and perilous voyages to the coast. The fur-seal, however, was taken in large numbers, and in later years yielded greater profits, on account of its greater abundance, than the sea-otter."

"During the Russian occupation of Alaska Territory the trade of sea-otter skins was of greater value and importance than any other branch of the fur trade, both from the high prices obtained for them, and also from the numbers which were taken. They were sent to China, where they were advantageously exchanged for tea and cloth. One sea-otter skin brought as much as ten seal-skins, and from ten to twenty times as much as any other skins found in Alaska.

Report of Lieutenant W. Maynard, United States' Navy, 1874 H. Ex. Doc. 43, p. 12, 44th Cong., 1st Sess.

"When the Russians first came into the country, in 1760-65, the abundance of sea-otter skins and their immensely greater value than that of any others found caused very little attention to be paid to the skins of fur-seals or those of other animals . . ."

Elliott's "Report on Condition of Alaska," 1874, p. 68.

"C. A. Williams.—Q. Under what process were they worked?—A. At first, when the Russians came to know this country of Bering Sea their hunting expeditions were confined mostly to the taking and killing of the sea-otter which abounded about the Aleutian chain. That was then the fur of most value in China, and the fur-seal was not anywhere near as profitable in trade as the otter, and were rather passed by."

H. R. 3883, 50th Cong., 2nd Sess., p. 77

"Allured by the beautiful furs of these new-found regions, they repeated their excursions from year to year, and though many of them perished with their vessels, or were surprised and murdered by the savages, yet such was the profit obtained, chiefly from the skins of the sea-otters, that increasing numbers were ready to embark in the perilous pursuit" (p. 12).

Pamphlet, 1830, London, printed by F. Shoberl, junr., Long Acre, "On the Ambitious Projects of Russia in regard to North-west America," by an Englishman.

English pamphlet,
1830-68 (F.O.
Library, 4187).

"The coasts of Kamtschatka formerly abounded in sea-otters, but the unrestricted destruction of these animals soon diminished their numbers to such a degree that the Company were obliged to go further in quest of them; for this reason they pushed on beyond the Aleutian Islands to the Island of Kadiac, situated near the American coast, and there fixed their principal establishment" (p. 13).

"The sea-otters taken by the Company's servants at this Settlement were at first a source of great profit, but those animals are becoming more and more scarce" (p. 15).

"The most valuable of the animals found here (Sitka) is the sea-otter, which inhabits only the north-west coast of America, between the latitude of 30° and 60°, is met with in smaller numbers on the shores of the Aleutian Islands, and formerly frequented the coast of Kamtschatka and the Kurile Islands. Its skin furnishes the finest fur in the world, which is highly prized both by Europeans and by the Chinese, and which rises in value from year to year with the decrease of the animal, that will probably soon disappear from the face of the earth, and merely figure as an embellishment in our zoological works. In China the skin of the sea-otter usually sells for 2 Spanish dollars" (p. 17).

The market for these skins was in the beginning found by the Russians in their own country, but before many years China also became a favourite market, the centre of the trade being at first in Irkutsk, and afterwards at Kiatcha. In 1785, and after Cook's third voyage, which is regarded as having opened the trade between the American coast and China by sea, this trade sprang into existence, and was for some years almost exclusively enjoyed by English vessels. Hanna, Portlock and Dixon, Meares, and many others visited the coast in connection with this particular trade. At a later date, and nearly contemporaneous with the first years of the present century (beginning about 1788), vessels from the eastern part of the United States began to engage in this trade, and eventually succeeded in securing the greater part of it, and continued their operations till the increasing scarcity of the sea-otter itself naturally brought them to a close, or reduced the trade to very small dimensions.

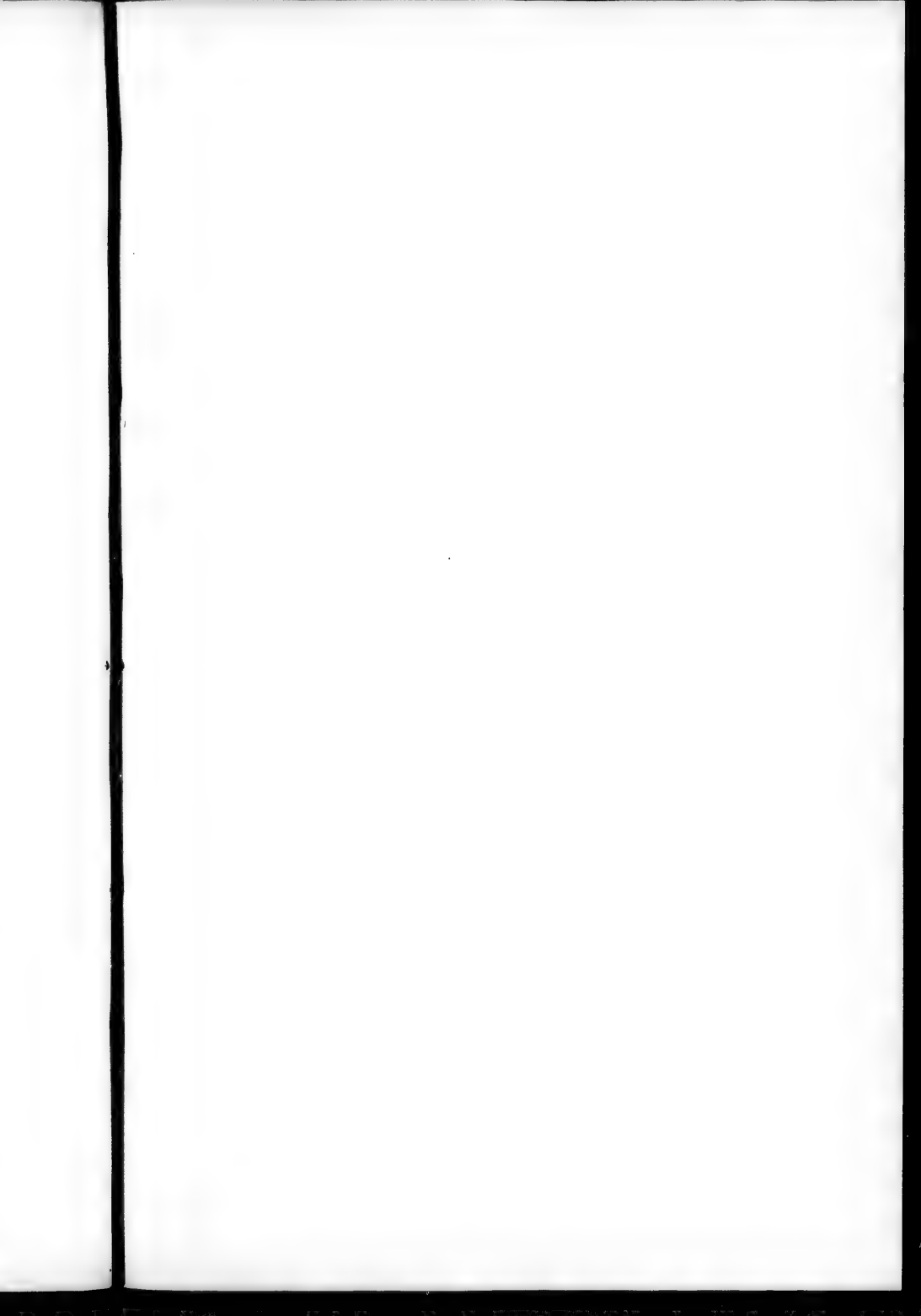
"History of the
North-west Coast,"
vol. i, pp. 375-377.

This great diminution in the volume of the trade in sea-otters occurred about the year 1846, according to Sturgis and Greenhow, who are quoted by Bancroft, and thereafter, and as a direct consequence of the scarcity of the sea-otter, the commerce of the entire coast became practically monopolized by two great Corporations, the Russian-American and Hudson's Bay Companies.

Ibid., p. 361 (see
also Franchère's
Narrative, p. 17).

That more details are not actually on record as to the places visited, and the scope of the trading voyages of the numerous vessels engaged in such trade when it was at its best, is largely accounted for by the fact that the adventurers generally concealed such details, with the object of reaping further individual benefit from their respective discoveries.

Meanwhile, and with the increasing rarity of the sea-



otter, the trade in fur-seal skins became relatively more important. It cannot, however, be regarded as having originated at this time, for its prosecution had been continuous, to a varying extent, from the date of Behring's voyage in 1741, and a much larger number of skins were obtained in years subsequent to 1786, in which year the Pribyloff Islands had been discovered. This particular trade, however, fell very largely into the hands of the Russians, who had established posts of one kind or another upon the principal breeding islands of the seal, and at other points of vantage on the northern coasts.

The Diminution of Seal Life on Pribyloff Islands.

UNITED STATES' MISMANAGEMENT.

The proposal to prohibit Pelagic Sealing.

Results of protecting seal herd.

United States' Case, p. 285.

THE United States' Case refers to—

"the insignificant investment of Canada," "the advisability of protecting and preserving the world's chief supply of fur seal-skins," "the employment of thousands of people in England and the United States for generations, and the investment of millions of capital."

It alleges—

As trustee, right and duty to protect.

United States' Case, pp. 300, 301.

"That the United States, possessing, as they alone possess, the power of preserving and cherishing this valuable interest, are in a most just sense the trustee thereof for the benefit of mankind, and should be permitted to discharge their trust without hindrance."

And insists—]

Pelagic sealing must be prohibited.

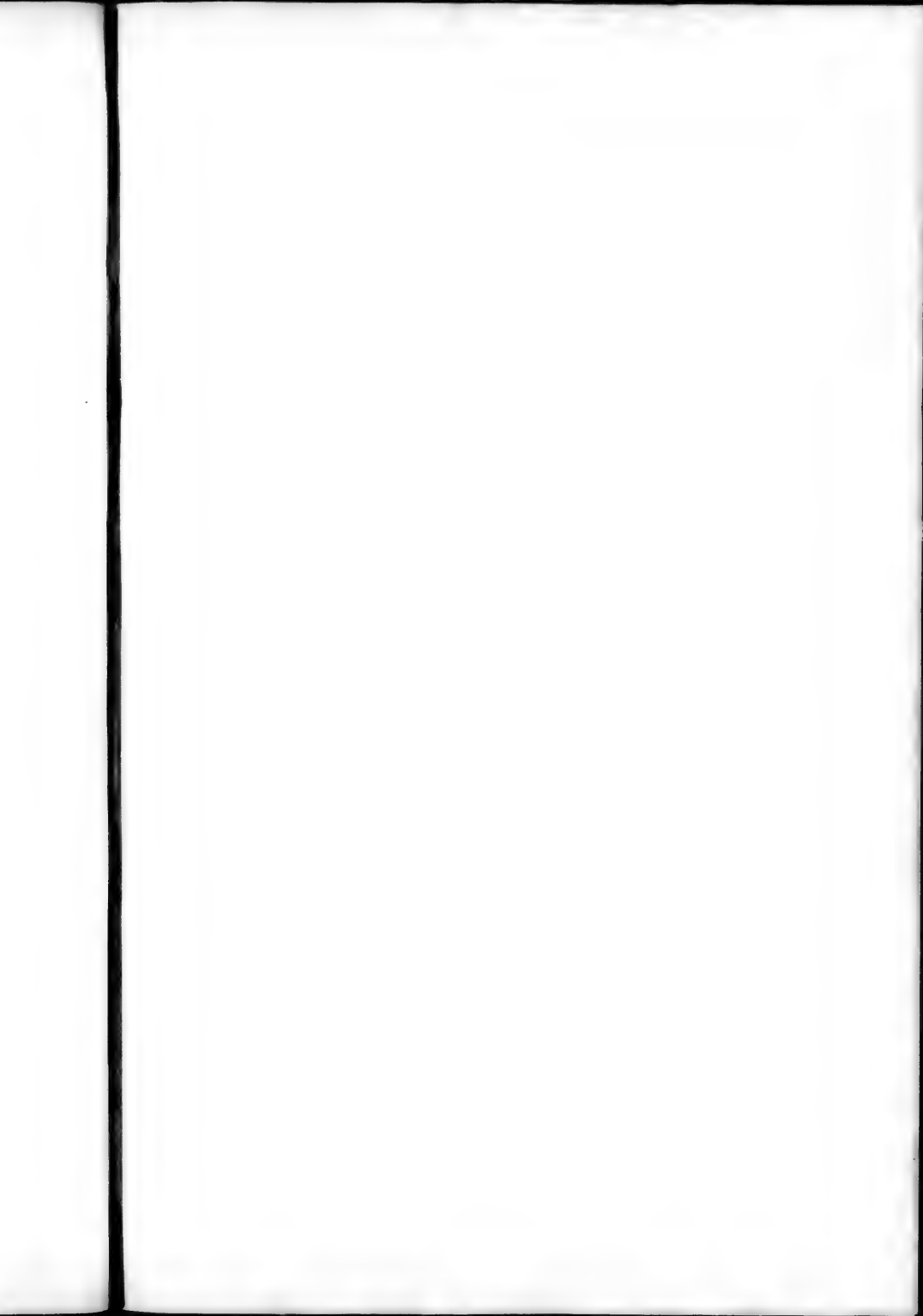
"that the extermination of this seal herd can only be prevented by the practical prohibition of pelagic sealing in all the waters to which it resorts."

The Case goes on to say—

Game Laws.

United States' Case, pp. 280, 281.

"All nations and races in all ages have recognized the necessity of affording sufficient protection for the reproduction and continued existence of all animal life useful to the human race. Even the savage recognizes and enforces this humanitarian and economic principle, but it is most fully recognized and enforced among civilized nations. An examination of the legislation of the countries of Europe and America shows that the protection of the Government is everywhere extended to animals *feræ naturæ* during the breeding season, and that especially the mother, when heavy with young or while her offspring is dependent upon her, is under the guardianship of the law. The wild animal on the land and the fish in the sea are both preserved by a close season and stringent rules, having particular reference to the reproduction and undiminished existence of the species."



Upon statements such as the above, the Tribunal of Arbitration is asked to prescribe Regulations more drastic in character than were ever submitted to the legislative body of any country in the world.

While Great Britain has agreed to join in measures for the prevention of the extermination of the fur-seal, and is directly interested in this respect only in pelagic sealing, the following facts should be remembered:—

In Denmark, the hair-seal is now being exterminated for the express purpose of preserving the fish which it devours. Rewards are offered for its destruction in Danish waters.

"Nautical Magazine,"
vol. lxx, No. 11,
November 1890.

Professor Elliott is of opinion, and reported to the United States officially, that the fur-seals in the Pacific consume 6,000,000 tons of fish every year at least.

Census Report, 1880,
p. 64.

Under these circumstances, considering the long coast-line of British territory on the Pacific, it is within the right of Great Britain to adopt the policy of Denmark respecting seals, in order to preserve the valuable cod, halibut, and other fisheries of these waters.

These fisheries are important to the citizens of the United States and to British subjects alike. It has been officially reported to the Senate of the United States—

"No wealth, national or personal, can be justly earned when it comes from diminishing the supply of human food.

Senate, 50th Cong.,
1st Sess., Misc. Doc.
No. 109, p. 68.

"With all our vast success of cereals and of animal food we still need all the fish we can gather from the oceans and seas for the comfort and economy of living, especially among the industrial classes of our rapidly increasing population. The Atlantic and Pacific fisheries rank in importance along with the production of beef, mutton, and pork as a source of food supply, and as a competitive element in the food markets even of this abundant country."

The United States' Case cites instances where nations, for joint benefit and common enjoyment of maritime pursuits, have adopted regulations applicable to territorial and non-territorial waters.

No case is found where, by Treaty or otherwise, one nation has even suggested that the sole control, regulation, and use of the free-swimming animals or other fisheries should be monopolized by one Power.

The United States' Case does not even argue

that it is within the power of legislation to secure a permanent enjoyment by man of any species of marine life. It can perhaps, on the other hand, be said that there is no country in the world where the preservation of fisheries and of wild animals generally has been so inadequately secured, or where measures for their protection have been so inefficiently enforced, as in the United States of America.

The United States' Case suggests that, given the sole control of seal life, that country is fitted for the position of trustee of this interest for the benefit of the whole world.

It has been shown in this Counter-Case that the destruction of seal life on the rookeries referred to in the United States' Case was in great measure the result of the operations of United States' hunters upon the breeding haunts of those animals—in certain cases with the direct and active encouragement of their own Government.

There is, therefore, an absence of any guarantee, or reason, for supposing that if the control and management of the fur-seal industry be placed entirely within the hands of the Government of that country, the permanency of seal life will be promoted or secured.

It is alleged by the United States that there has been careful management on the part of that country of seals upon the Pribiloff Islands, and that the decrease became marked in 1884.

It is insisted that the decrease was coincident with pelagic sealing.

It is therefore insisted that pelagic sealing is the cause of the decrease.

Pelagic sealing is alleged to have begun in 1884, and it is said seal life showed a decrease on the islands in that year.

If this is the case, it is impossible that pelagic sealing was the cause of the decrease.

The evidence as to the beginning of the decrease of seal life on the islands is most unsatisfactory and contradictory.

The British Commissioners who visited the islands in 1891 state that the decrease began in 1882-83.

While the United States' Case now dates it from 1884, Mr. Blaine said it began in 1885, "when Canadian sealers made their way into Behring Sea;" and yet in another despatch he stated that the seals were increasing, and

United States' Case,
p. 164.

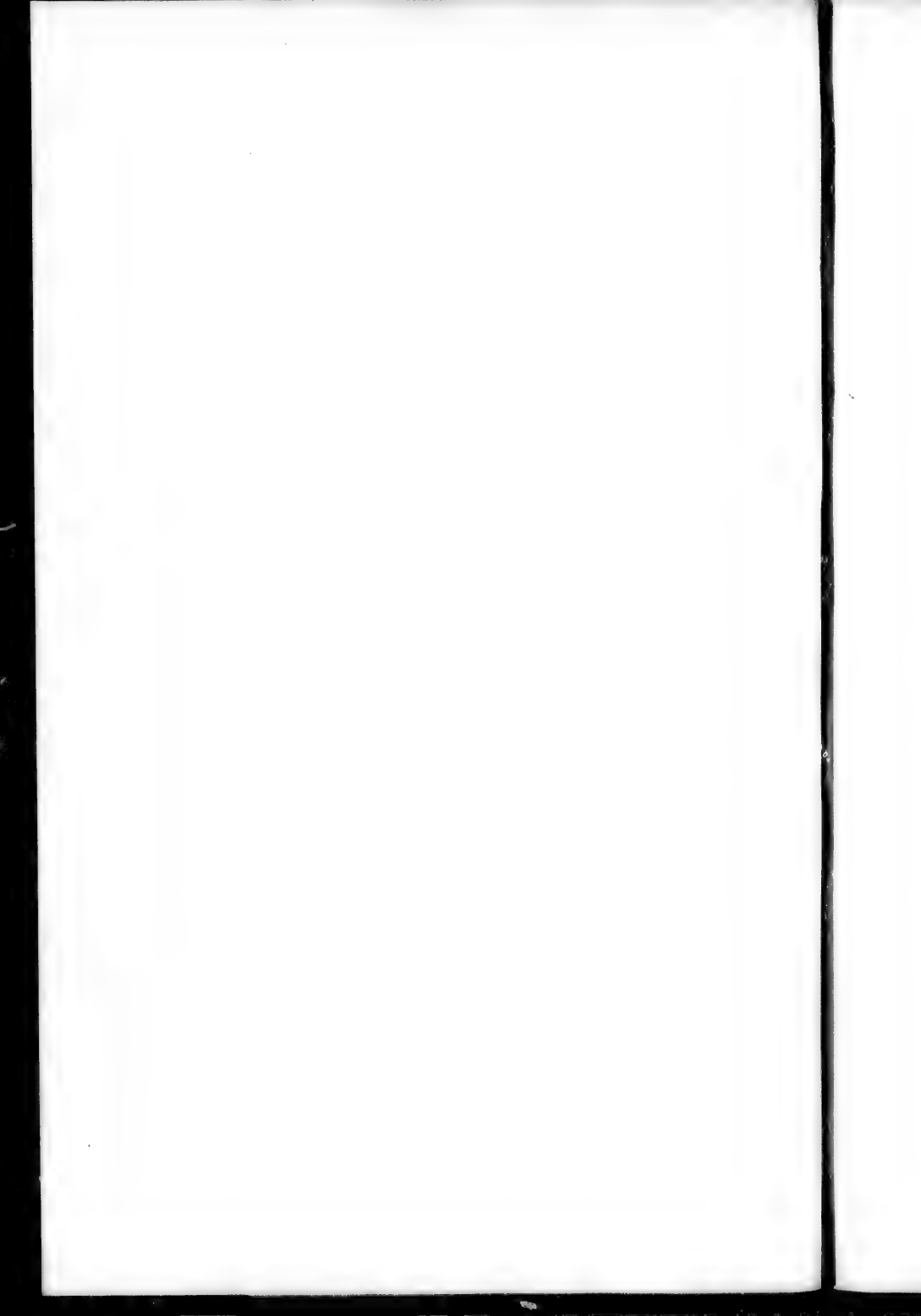
Ibid., p. 165.

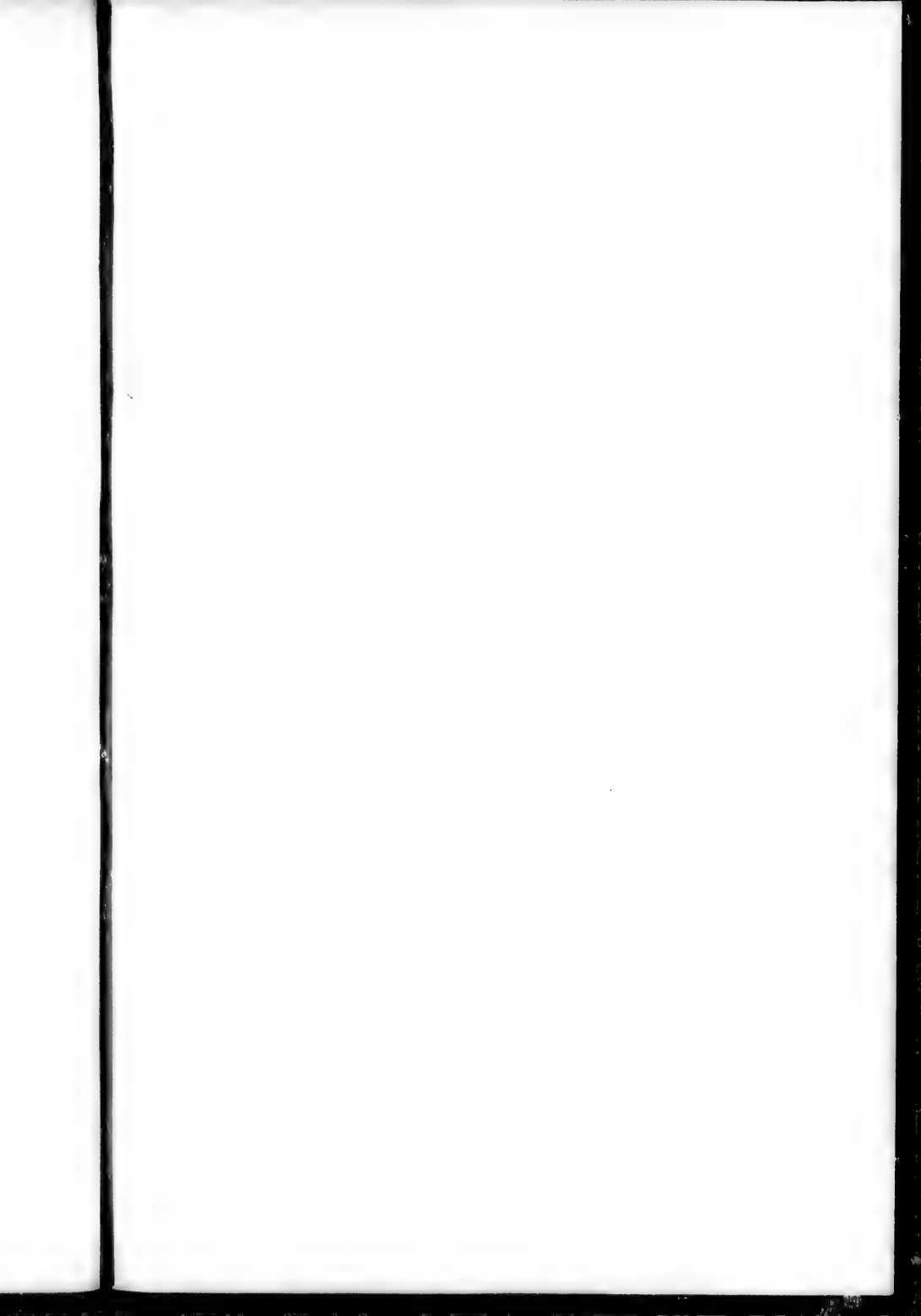
Ibid., pp. 176, 177,
216.

Ibid., pp. 165, 166,
212, 213.

British Commissioners' Report,
pp. 117-119.

British Case,
Appendix, vol. III,
p. 443.





100,000 could safely be killed on the islands until 1886. British Case, Appendix, vol. iii, p. 597.

The official Reports of the United States are not all reliable.

In 1881, Mr. Taylor, a Special Agent at the islands from April to August of that year, says there was in his time no diminution. Ibid., p. 489

In 1884, Mr. Wardman, an Assistant Agent at the Seal Islands from 1881 to 1885, reports seals as increasing. Ibid., p. 446; and "A Trip to Alaska," p. 98.

In 1885, Mr. Glidden, Agent in charge of the Seal Islands from 1882 to 1885, reports no change took place in the numbers of seals from the time of his arrival in 1882 to his departure in 1885. U. S. 3889, 50th Cong., 2nd Sess., p. 27. British Case, Appendix, vol. iii, p. 145.

In 1886, Mr. Tingle, Agent in charge from 1885 to 1889, reported the seals as still on the increase. In 1887 and 1888, this officer reports an increase, and denies that seal life is being depleted. U. S. 3893, 50th Cong., 2nd Sess., p. 102. British Case, Appendix, vol. iii, p. 146.

It may be mentioned that on the 13th December, 1886, the Secretary of the Treasury was requested by a unanimous Resolution of the Senate to furnish that body with a copy of Mr. Tingle's Report of the 31st July, 1886. 49th Cong., 2nd Sess., Senate, December 13, 1886.

In 1889, Mr. Wilcox, the Statistical Agent of the United States' Fish Commissioners, testified before a Committee of the United States' Senate that seals have been seen in as many numbers that year as ever before. Relations with Canada, p. 215. British Papers "United States No. 1 (1891)"

Captain Healy, Commander of the United States' revenue-cutter "Bear," after his cruise in Behring Sea, reported as follows:— Canadian Print Confidential Correspondence, "Behring Sea," p. 555.

"I think there are probably as many seals as ever, but the bad weather this season may have caused the small catch, and confined the larger catches to only a few hunters."

"It should not be a matter of surprise if the seal refuse to herd as thickly as in former years. Some captains told me they had seen fat-seals farther north than before. This may have been caused by scarcity of food or stormy weather."

Mr. Goff, Special Agent in 1890, reported, on the 31st July of that year:—

"Notwithstanding the fact that the seals were looked upon as inexhaustible, and were officially reported to be increasing as late as 1888, the time has suddenly come when experiment and imagination must cease, and the truth be said."

San Francisco news-paper, November 30, 1890.

His Assistant, Mr. Murray, reports in the same year :—

"That the seals should have disappeared so rapidly since the Report of your predecessor in 1888 is so astounding that those who cannot see the rookeries and hauling-grounds for themselves may well be pardoned for doubting what is, I am sorry to say, only too true, painful though it be to all who are interested; the whole truth must, nevertheless, be told, and that is that the seals have been steadily decreasing since 1880."

Nevertheless, Mr. Tingle, Superintendent of the Seal Company, and formerly Agent of the Treasury, insists, on the 18th July, 1890 :—

"We have every reason to believe, from the marked increase of new arrivals of fine seals, that if we were allowed by you to continue our killing under the law, we could fill our quota of 60,000 seals."

It is remarkable that, while the United States' Case now dates the decrease in seal life on the Pribyloff Islands from 1884, the Government of that country permitted the lessees to kill annually until 1890 no less than 100,000 seals upon the breeding-islands, notwithstanding a provision in the lease in the interest of seal life which authorizes the Government to reduce the number to be killed in each year.

Raids.

United States' Case,
p. 174.

In the endeavour to show that pelagic sealing is the sole cause of a decrease in seal life, the United States' Case and United States' Commissioners insist that raids upon the rookeries or the unlawful killing of seals on the islands "have played no important part in the history of the rookeries," that the destruction by raiders has been "very inconsiderable," and that raiding would be difficult without the knowledge of the officer in charge.

Ibid., p. 175.

It is denied that raids were ever "frequent or effective." It is therefore finally claimed that pelagic sealing is the sole cause of a "great decrease."

This position is entirely unsupportable.

The raids cited in the British Case and in the Report of the British Commissioners refute this statement completely.

These authorities show—

The raids to have been numerous and continuous.

Wholesale and destructive raids occurred.

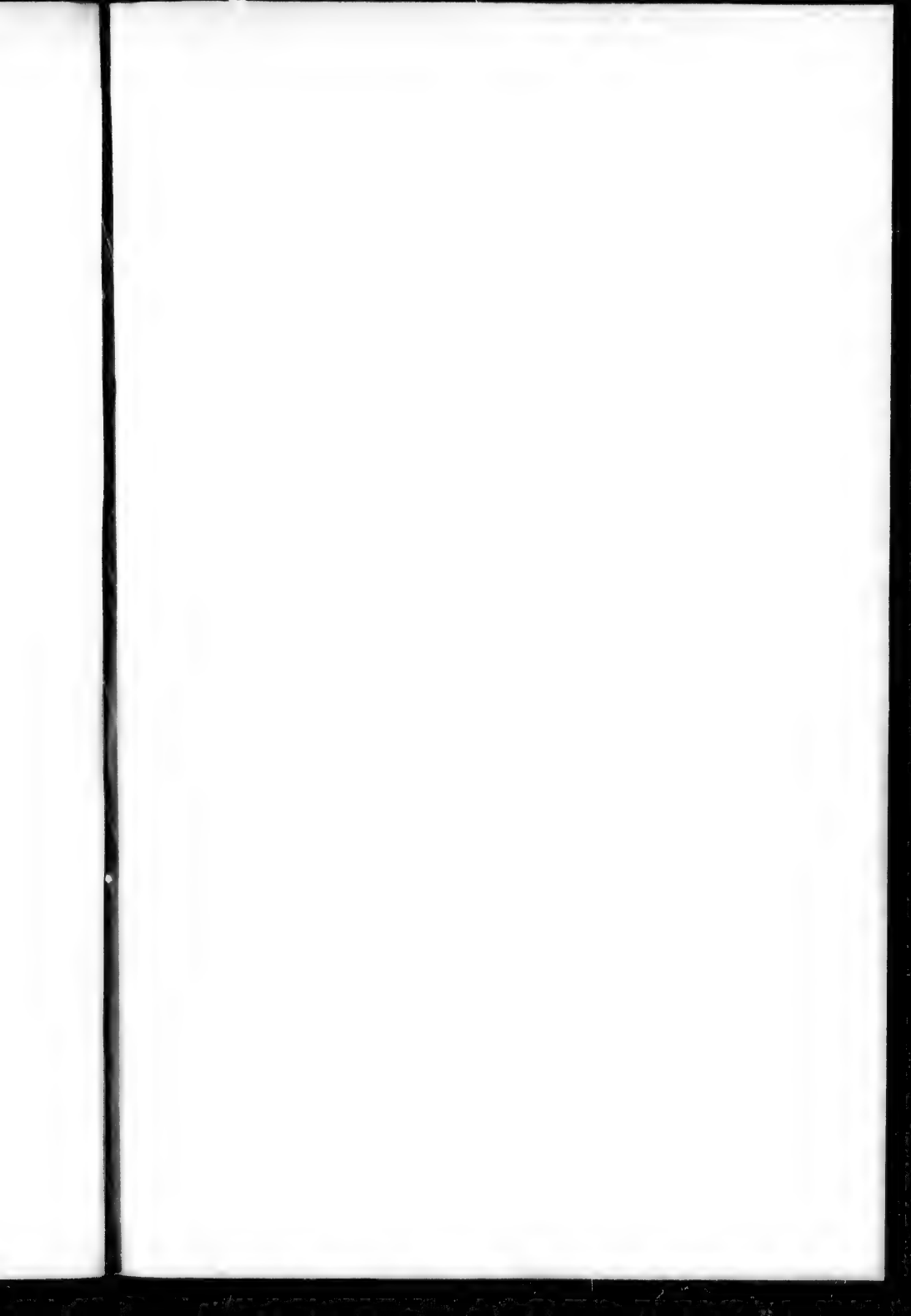
On Robben Island and other islands in the

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C

British Case,
pp. 110, 111.

British Commissioners' Report,
pp. 125-126.



Okhotsk and Japanese Seas raids were reported officially to the United States between 1871 and 1880, and subsequently.

It may be added that H. A. Glidden, a Special Agent of the Treasury Department at the Pribyloff Islands from the 31st May, 1882, to the 8th June, 1885, testified before the Congressional Committee in 1889 that the great trouble they had was to watch marauders. "That was more trouble than anything else."

H. R. 3868,
50th Cong., 2nd Sess.,
p. 26.

T. F. Ryan, a Special Agent of the Treasury, testified as follows:—

"A . . . I had a great deal of trouble in looking after and protecting the rookeries from what we call there pirates. Schooners go up there and go on land and take seals.

H. R. 3863,
50th Cong., 2nd Sess.:
"The Fur seal and
other Fisheries of
Alaska," Washington,
1889, p. 211.

"One morning we got, I believe, 112 seal-skins, knives and hatchets, and things of that kind, with which the seal-hunters had come to hunt and slaughter seals, especially the cows, leaving their pups to be destroyed. There were instances of that kind, and I wrote a very strong letter to the Department, stating that somebody should be held responsible for this, and I thought the Department in Washington, whose duty it was to look after the Government interests, should have a revenue-cutter come there and cruise about, for heretofore the revenue-cutter came up there and passed up and beyond, and it was not sufficient protection of Government interests."

Ibid., p. 212.

T. F. Morgan, a Special Agent, testified:—

"We have had raids on the rookeries several seasons."

H. R. 3863,
50th Cong., 2nd Sess.,
p. 64.

The lessees of the United States' Government did not hesitate to destroy a rookery on Robben Island in 1883.

British Case,
Appendix, vol. iii,
p. 363.

The exposed condition of the rookeries and their ineffectual protection from raids—most of the raiders being on United States' vessels—was dealt with by Mr. C. A. Williams, who, before the Congressional Committee, said:—

"For the last three or four years there have been increased depredations annually upon the rookeries."

H. R. 3863,
50th Cong., 2nd Sess.,
p. 106.

Mr. Wardman said:—

"The trouble has been in the Revenue Marine Service. The appropriations were all right, and a fellow would be sent up to nominally protect the Seal Islands, but he would also be ordered to look for the North Pole, as well as watch the Seal Islands

Ibid., pp. 38, 39.

"The first raid that occurred on St. George while I was there occurred on the 2nd September, when they raided a rookery and killed some seals. They created a gap in the rookery, and that gap never closed up that year. The seals never went back that year. When I saw it, I thought it had been created by a sea-lion disturbance. A few days afterwards a native went to the rookery who had more experience, as that was the first year I was there. He found some young seals dead and some dying. There was a line where the keel of the boat had been hauled up. It was on the morning of the 2nd September that the natives had reported a schooner standing south, away down the horizon. On the 3rd September the revenue-cutter 'Itush' arrived at St. George, and I asked Captain Healy if he had met a schooner, and he said no, he had not seen anything of it. Yet, the schooner, twenty-four hours before, had made a raid on the rookery."

W. B. Taylor testified as follows:—

H. R. 3868,
60th Cong., 2nd Sess.,
p. 84.

"These vessels will take occasion to hang around the islands, and when there is a heavy fog to go on the rookeries. Very often. When I was there they left sixty different carcasses on the island. I went over to look at them. The Government Agents there are utterly powerless to prevent the killing of seal, or to protect them in any way. There is no vessel there, and there is no harbour for a vessel, and I would like to make a recommendation in this connection. I believe, with the expenditure of a very few thousand dollars, that the Government can build or construct a harbour that will be sufficiently large for a good strong steam-launch, and with that steam-launch the Government Agent can protect the islands very well, because the vessels that prowl around are sailing-vessels, and they cannot always get out fast and a steam-launch can catch them; and that is something that I think ought to be done."

And again:—

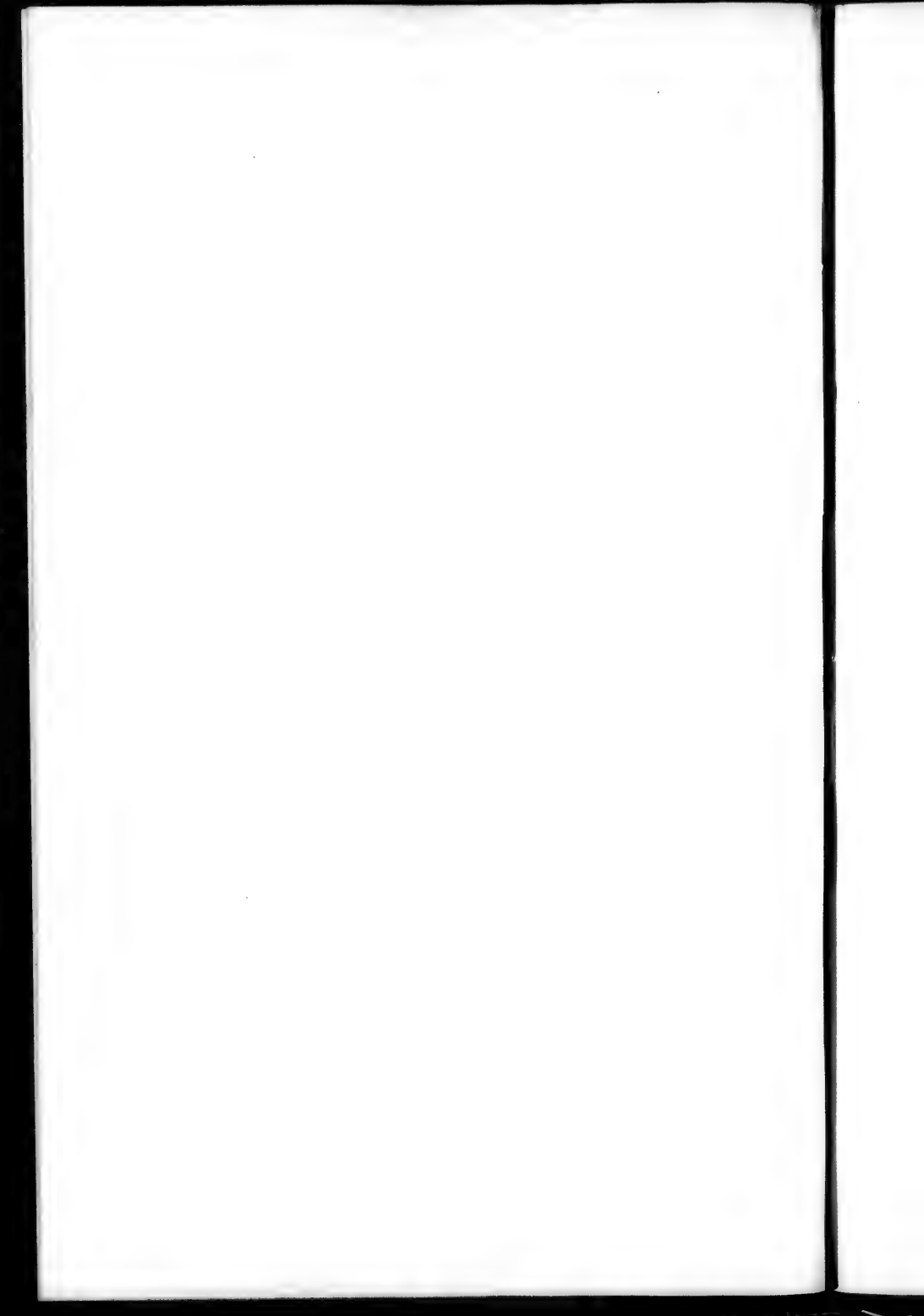
Ibid., p. 58.

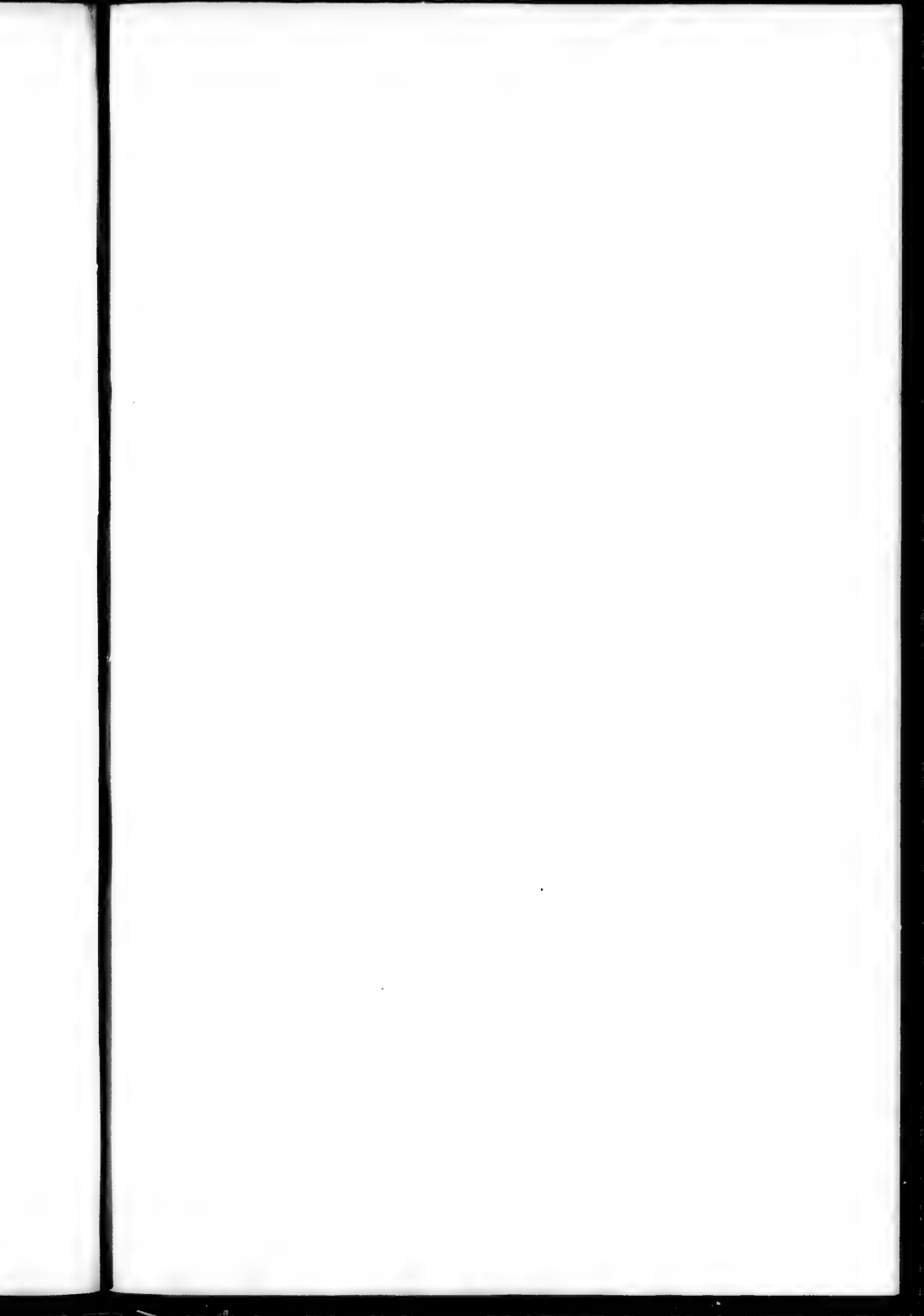
"The difficulty heretofore has been that one revenue-cutter has been obliged to cover a territory of 800 miles long and 700 or 800 miles wide north and south, and they would get around to the Seal Islands about twice during the season. They never happen to be there when needed, and as far as their rendering any service whatever is concerned, they were practically useless so far as the Seal Islands were concerned. That has been the experience, I believe, of all who have been there."

Mr. T. F. Ryan was further examined:—

Ibid., p. 219.

"Q. Can that herd of seals be preserved in a better manner than the policy now pursued there?—A. It can be improved by putting a revenue-cutter there. There was none there this season, I understand. If you keep a revenue-cutter to go there for that business, I think the interest can be protected."





"Q. Strictly, so as to prohibit depredations?—A. Yes, Sir.

"Q. Is it your opinion that the revenue, by keeping up a strict protection over the seals and rookeries, may be increased under that policy?—A. Yes, Sir; I think so. I think this present Company will bid more for it next time."

Mr. Wardman, who was a witness before the Congressional Committee in 1880, says, in an account of a trip to Alaska:—

"Sea-otter Island, lying about 5 miles southwardly from St. Paul's, is another landing-place for the fur-seal, but only to a limited extent. Owing to the fact that it is not permanently inhabited, some marauders were in the habit of landing on the opposite side, where they could not be seen from St. Paul's, and killing whatever seals they could find, without regard to sex, age, or condition. The Company reported these facts to the Secretary of the Treasury, who decided that the intention of the Act under which the lease was authorized appeared to give all the islands of the group to the lessees for the regulation of the traffic and preservation of the fur-seal."

Wardman's "Trip to Alaska," pp. 116, 117, Boston and New York, 1884.
British Case, Appendix, vol. iii, p. 280.

Agent Lavender, 25th August, 1890, reported a raid on St. George Island. They found four dead cows and four dead pups. This raid he attributes to the United States' schooner "Nettie Martin."

Lavender's Report, British Case, Appendix, vol. iii, pp. 48, 50 (2nd part Appendix).

And on the 24th October, 1890, he asks for arms and ammunition, without which, he says—
"the rookeries cannot be protected in a proper manner."

In 1881, Mr. Elliott, who had acted as a Special Agent of the United States' Government, exposed the failure of that Government to sustain the Agents of the Treasury in the methods to protect the seals when in their breeding-haunts on the rookeries, and suggested the danger of neglect to do this.

He wrote as follows:—

"Causes which demand the presence of a Revenue Marine Cutter in Alaskan Waters.—There remains an unwritten page in the history of the action of the Government towards the protection of seal life on the Pribiloff Islands, and it is eminently proper that it should be inscribed now, especially so since the author of this memoir was an eye-witness and an actor in the scene. When he first visited the Seal Islands, in 1872-73, he was compelled to take passage on the vessels of the Company leasing the islands; compelled, because the Government at that time had no means of reaching the field of action except by the favour and the courtesy of the Alaska Commercial Company.

Extract from "The Seal Islands of Alaska," by Henry W. Elliott, 1881, pp. 167, 168.

This favour and this courtesy, as might be expected, was always promptly and generously proffered, and has never been alluded to as even an obligation or service rendered the Treasury Department. But, nevertheless, the thought occurred to me at the time, and was strengthened into conviction by 1874, that this indifference to its own self-respect and failure to support properly the aims of its Agents up there should end; and that the Treasury Department should detail one of its own vessels to visit, transport, and aid its officers on the Pribyloff Islands, and also be an actual living evidence of power to execute the law protecting and conserving the same.

Early in 1873 it became well known on the Pacific coast that the officers of the law on the Seal Islands had no means of enforcing the Regulations protecting the seal life on the same or in the waters adjacent; hence, a number of small craft, fitted out at San Francisco and contiguous ports, which cleared for the north-west coast and the Aleutian Islands on 'fishing ventures,' but, in reality, these vessels proceeded directly to the waters and rocks adjacent to the Seal Islands, where, in plain sight of the village on either islet, they shot the swimming seals with assumed indifference and great affectation of legality.

British Commissioners' Report, p. 6.

It is shown by the British Commissioners that while the danger to seal life on the breeding-islands is particularly great, there has occurred there excessive slaughter. It is also shown that while the United States' authorities had power to reduce the annual number to be killed by the lessees, the lessees were practically permitted for years to kill at the rate of 100,000 annually, notwithstanding recommendations on the part of United States' officials for a reduction in the number. In some years that number was even greatly exceeded.

See p. 10, British Commissioners' Report, also p. 114 et seq.

It is shown also that great damage has been done by the great number of male seals destroyed from time to time by the lessees on the breeding-islands.

The following is from the Report of the examination, before a Congressional Committee, of Mr. Charles Bryant, an officer on whom the United States now rely:—

44th Cong., 1st Sess., H. R. No. 623, p. 99.

Q. Your opinion, then, is that the number of 100,000 on the two islands, authorized by law, can be regularly taken without diminishing the crop or number of seals coming to the island?—A. I don't feel quite sure of that, as will be seen in my detailed Report to the Secretary of the Treasury, included in the evidence which has been laid before the Committee. There were indications of diminution in the number of male seal.

"I gave that, and another reason which I explained at

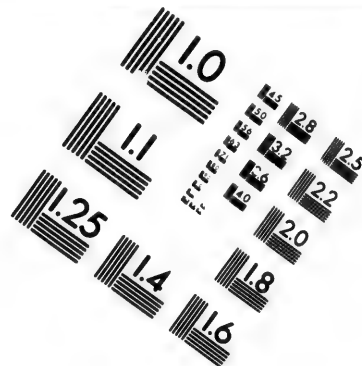
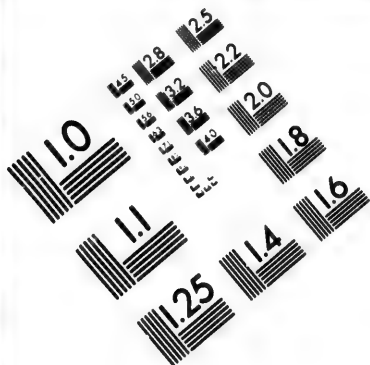
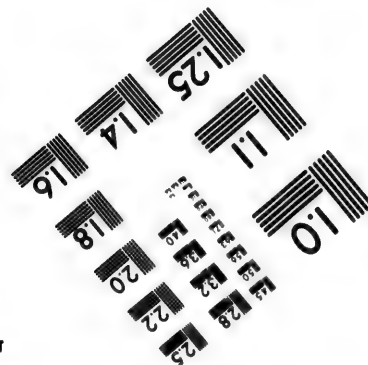
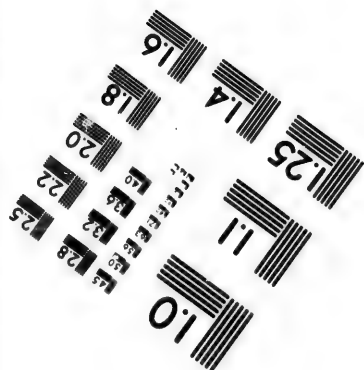
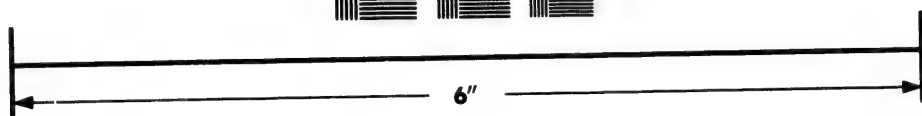
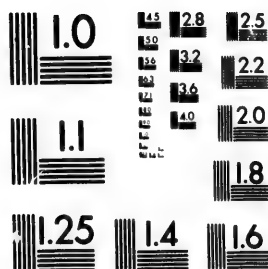


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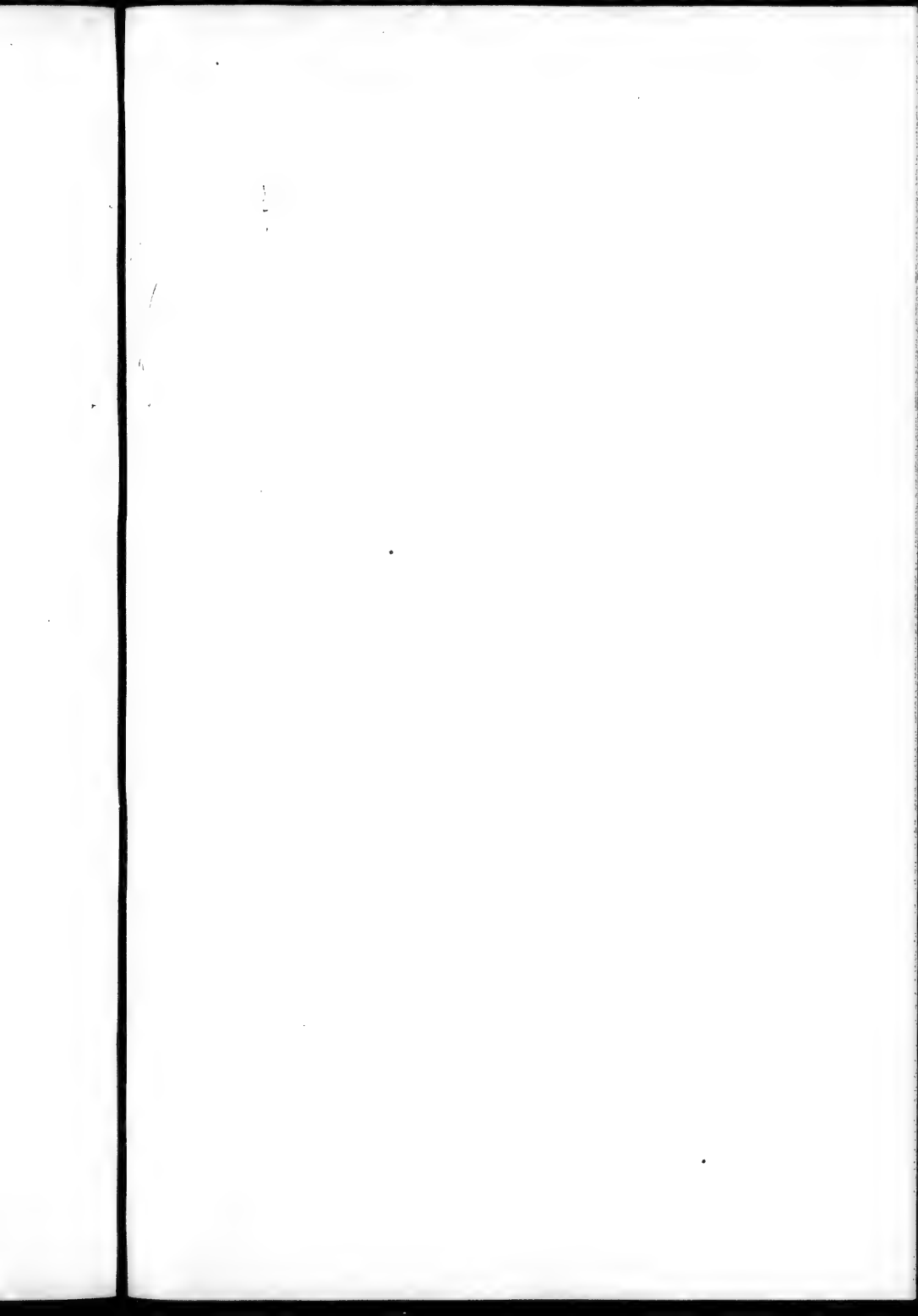


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large in that Report. In the season of 1868, before the Prohibitory Law was passed and enforced, numerous parties sealed on the islands at will, and took about 240,000 or 250,000 seals. They killed mostly all the product of 1866 and 1867.

"In making our calculation for breeding seals we did not take that loss into consideration, so that in 1872 and 1873, when the crop of 1866 and 1867 would have matured, we were a little short. These seals had been killed. For that reason, to render the matter doubly sure, I recommended in my Report to the Secretary a diminution of 15,000 for the two years ensuing. . . ."

"Q. It looks, then, as if the males ought also to increase ?
—A. I think that number of 100,000 was a little more than ought to have been begun with. I think if we had begun at 85,000 there would have been no necessity for diminishing. On the other hand, I think that within two years from now it could be increased. . . ."

44th Cong., 1st Sess.,
H. R. No. 623, p. 99.

This advice, given years ago, was never adopted.

Mr. Lavender, Assistant Treasury Agent, also in 1890 reported that the constant driving and killing of young males was depriving the islands of males.

Ibid., pp. 20, 21.

Mr. Nettleton, Assistant Treasury Agent, agrees in this.

Ibid., pp. 47, 48.

Agent Murray shows that the seals have diminished—

"because all the male seals had been slaughtered without allowing any to grow to maturity for use on the breeding-ground."

Senate Ex. Doc. 49,
51st Cong., 2nd Sess.

Professor Elliott has condemned the killing of bull seals on the islands by the lessees as "most ruinous to seal life."

In the driving of seals serious damage has been done by the lessees.

British Commissioners' Report, p. 121
et seq.

The British Commissioners lay stress on the subject of the injurious effect from the practice of driving and other practices on the island.

Appendix.

Professor Elliott, who visited the islands under authority of a Resolution of Congress as a Special Commissioner during the year 1891, sustains the views of the British Commissioners under this head.

Mr. Goff, Special United States' Agent in 1890, refers to the torture of the seals in driving and re-driving:—

"The drivers were merely torturing the young seals, injuring the future life and vitality of the breeding rookeries, to the detriment of the lessees, natives, and the Government."

Senate Ex. Doc. 49,
51st Cong., 2nd Sess.

Agent Lavender records how it occurred to him that—

Senate Ex. Doc. 49,
51st Cong., 2nd Sess.

"the constant driving of young male seals and the killing of all the 2-, 3-, 4-, and 5-year-olds, that there were no young bulls left to go on the rookeries."

He adds that the Government should control the islands for the next six or seven years—

Ibid.

"and then all the males driven should be killed."

Another writer says:—

G. Wardman,
H. R. 3888,
Cong., Res.,
p. 83.

"Some of the fellows (natives) were lazy and would not get out at once, and the result would be the 'drive' would be late, the day would be warm, and some of the seals would die while on the 'drive.'"

In a pamphlet published by the sealers on the Pacific coast in 1889 [?] for distribution in Congress, it was well said—

British Cons.
Appendix, vol. iii,
p. 286. Pamphlet of
C. D. Ladd.

"In all cases where rookeries have been broken up it has been done by hunters directly on the beach where the seal land, and by hunting and killing them indiscriminately, so that they could not land and have their young and care for the same."

And it asked:—

Ibid., p. 287.

"Was there ever a more cruel and brutal method invented for killing dumb animals than is now practised in killing seals on the Islands of St. George and St. Paul? Imagine how these highly intelligent animals are gradually forced and driven away from the sea, their native element—driven inland as far as deemed practical. The slaughter then commences. Imagine a gang of men with clubs and bludgeons knocking out their brains, right and left, and if the seal is not hit right at the first blow, it is followed up and slaughtered, its brains being knocked out by a club. Who can imagine a more cruel method than this for killing dumb animals? Certainly, the private sealers' method is the more humane of the two."

H. R. Ex. Doc.
No. 40, 46th Cong.,
3rd Sess., vol. xviii,
pp. 65, 66.

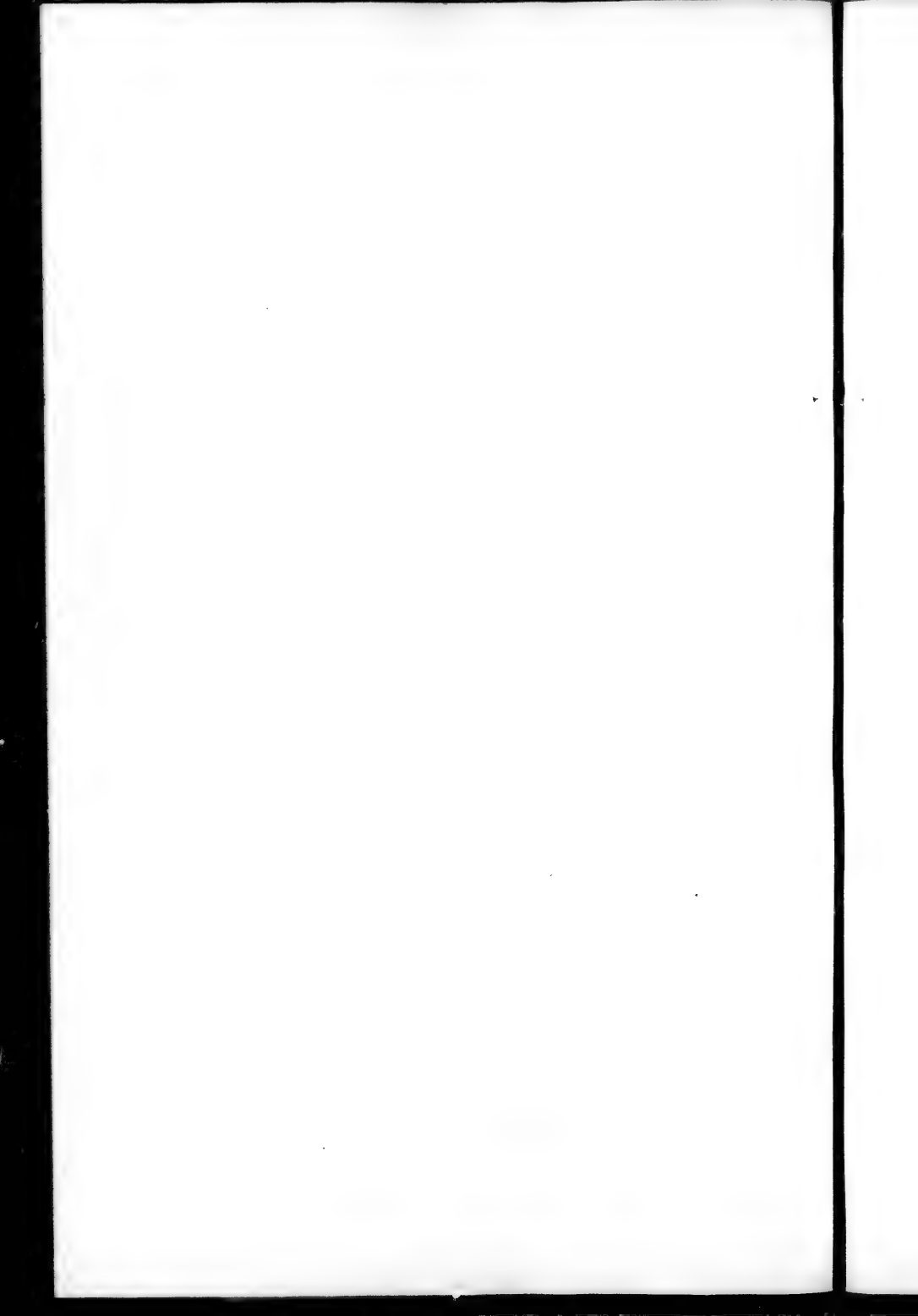
Petroff reported to the United States' Government in 1880 that losses occurred on the islands when seals were driven to be killed, and from over-cutting of the skins, and for these the lessees were permitted to exceed the limit of 100,000 per year.

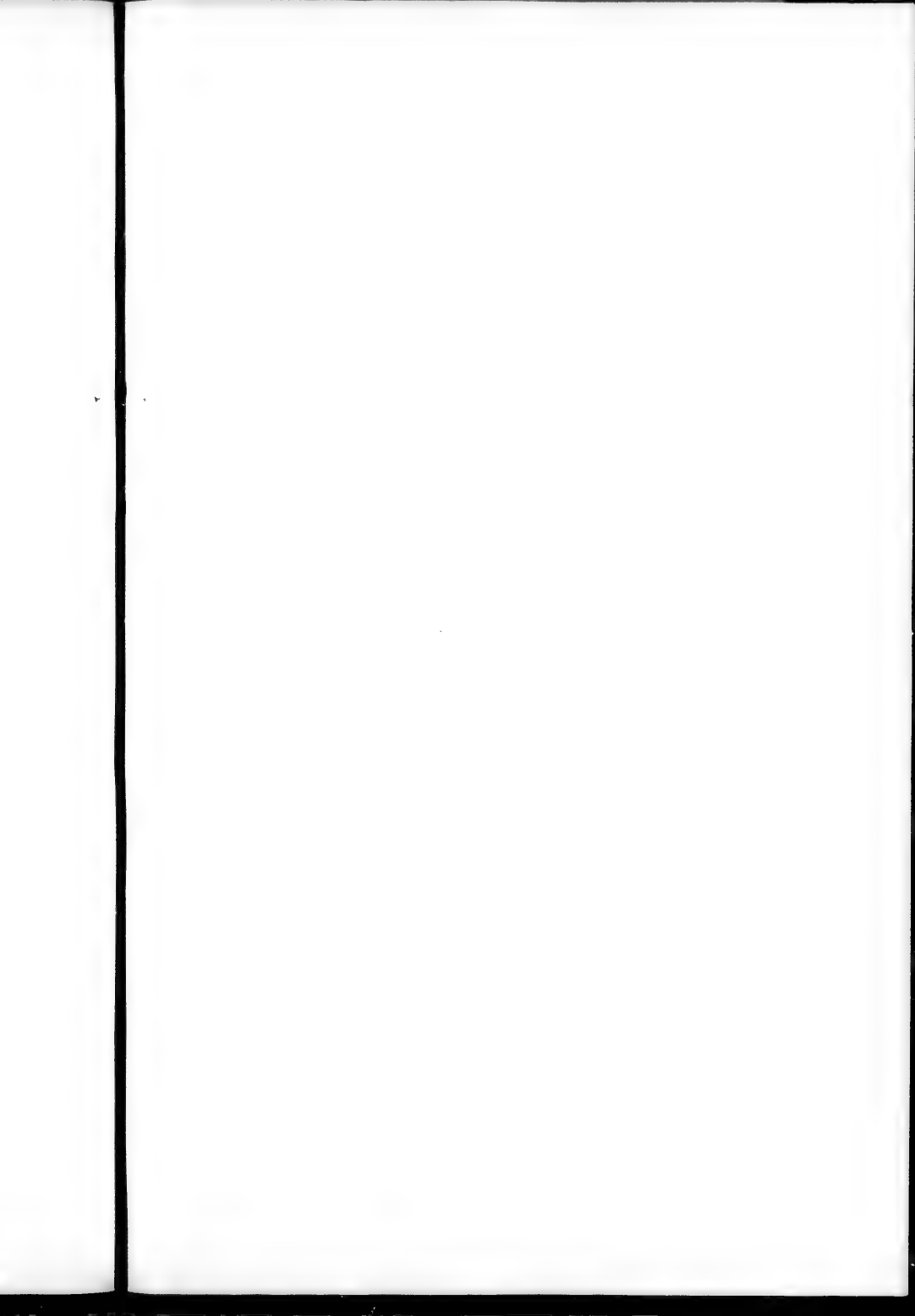
The following practices have gone on within territory admittedly under the jurisdiction of the United States:—

Wardman relates how—

Wardman's "Trip to
Alaska," pp. 116, 117,
Boston and New York,
1886.

"Young seals, before reaching a valuable age, are annually killed for food on the islands with the permission of the United States' Government."





The Aleuts have been in the habit of killing many seals as they journeyed through the Aleutian Islands to drop their young on St. Paul and St. George.

Petroff's Report,
H. R. Ex. Doc.
No. 40, 46th Cong.,
3rd Sess., p. 21.

The same person, in testifying before the Congressional Committee, says:—

"We could not get the natives to try to preserve the seal life. Boys of 12 and 14 years old would kill the seal pups. They say they are a mild sort of people, but they never have a chance to abuse a dumb creature but they do it. . . ."

H. R. No. 3883,
60th Cong., 2nd Sess.,
p. 32.

Agent S. R. Nettleton records his opinion that it would be to the—

"best interest of the natives and the best interest of the Government"

if some more economical substitute for seal pups as food for the natives were adopted.

Again, Agent Glidden says:—

"Sometimes they cut a skin so it is not good for anything much, and that is rejected. That, of course, they (the natives) do not get pay for. The skin is cut in pieces and then burned."

Ibid., p. 28.

W. B. Taylor testified:—

"After the count, the badly cut skins which were of no use were thrown over the cliff."

Ibid. p. 45.

One of the witnesses before the Congressional Committee (William Gavitt) also showed that the lessees of the islands were not so particular as other Agents pretend, when he swears that they bought from the natives at Ounalaska 5,000 seals killed by them there.

British Case,
Appendix, vol. iii,
p. 442.

(Yet it was illegal to kill except at the Pribyloff Islands.)

Under the Russian régime in 1803, after a slaughter was conducted for some years without regard to the market, an accumulation of 800,000 skins were found in the store-houses in the islands, 700,000 of which were thrown into the sea as worthless.

H. R. Ex. Doc.
No. 36, 41st Cong.,
2nd Sess.; and
Behring Sea Correspondence, Canadian
Print, p. 340.

And in the time of the lessees of the United States wasteful practices prevailed.

The mate of the schooner "Leon," a watch-vessel of the Alaska Commercial Company, was found at Robben Bank, or Island, in September 1883. He had fifteen Aleuts with him. On the shore were discovered a great heap of dead and rotten seals The seals had been driven

British Case,
Appendix, vol. iii,
p. 368.

into a heap, clubbed, and afterwards a great number of them were cut and mutilated so as to destroy the skins and hasten decay. When asked why he had killed these thousands of cows and pups, the mate replied, "That is to keep any of these Yokohama fellows from getting anything this year."

The mate was asked for his authority for being there and for his acts. A document was shown, signed by the Alaska Commercial Company, directing him not to allow any one to land on the island, except the servants of the Company.

By actual count the dead seals numbered between 9,000 and 10,000, nearly all being cows and pups.

So far from quiet and seclusion being preserved for the seals on the Pribyloff Islands, there is a record of continuous disturbance and of ruinous practices.

Where United States' authorities agree that certain measures are indispensable upon the breeding-islands in order to preserve seal life, and to induce the seals to continue their resort thither, there has been extraordinary neglect on the part of the United States.

Mr. Boutwell, when Secretary of State of the United States years ago, reported that—

H. R. Ex. Doc.
No. 129, p. 2;
41st Cong., 2nd Sess.;
also *British Case*,
Appendix, vol. iii,
p. 449.

"Great care was necessary for the preservation of the seal fisheries upon the Islands of St. George and St. Paul."

And that—

See also evidence
before Congressional
Committee of 1889 as
to insufficient protec-
tion of islands.
British Case,
Appendix, vol. iii,
p. 448.

" It was necessary in any event to maintain in and around the islands an enlarged naval force for the protection of the same."

This has never been attempted by the Government of the United States.

It was stated in 1880 before the Congressional Committee that—

H. R. 5889,
50th Cong., 1st Sess.;
also *British Case*,
Appendix, vol. iii,
p. 445.

" the Government now, without any care or risk, gets 317,000 dollars out of the lease."

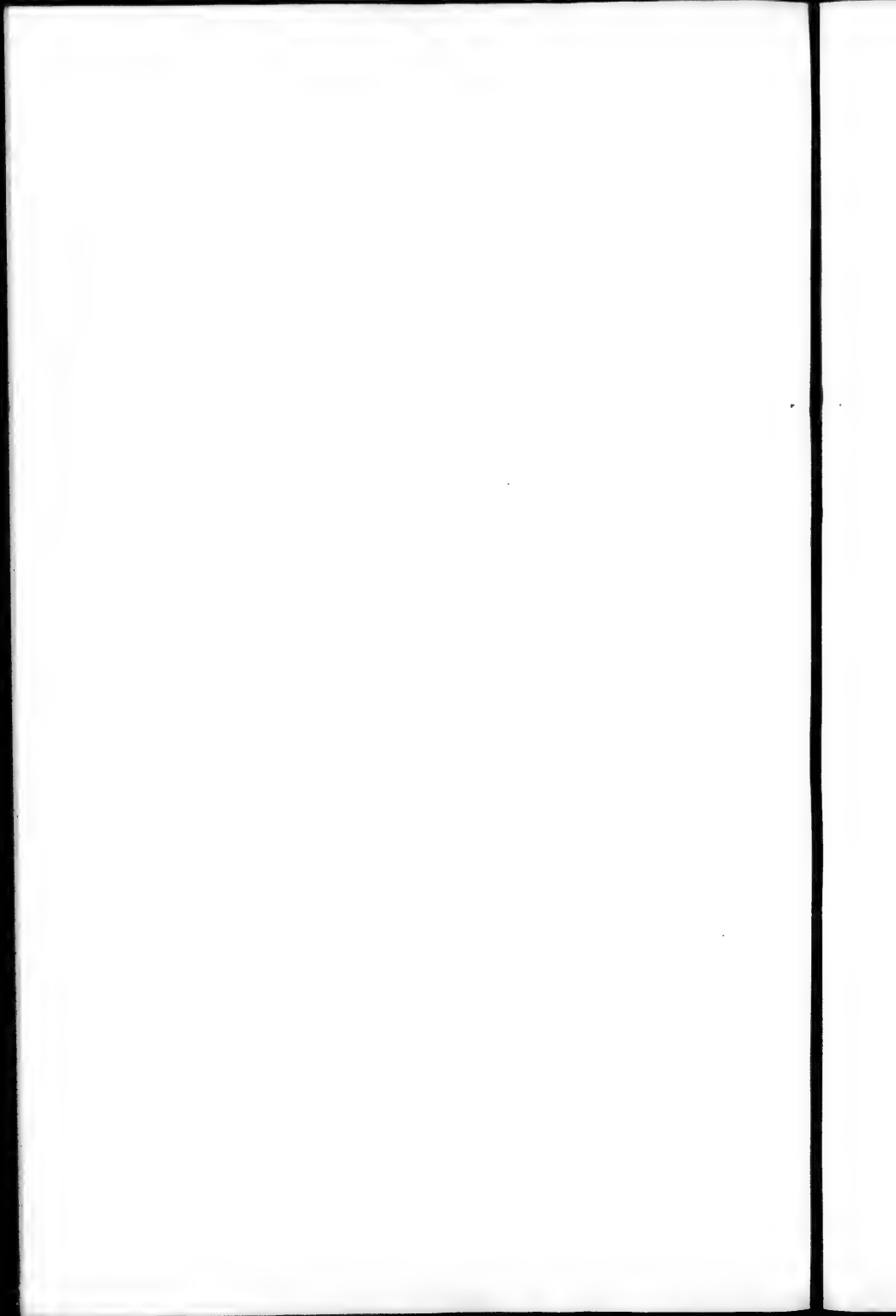
Mr. Goff, a Treasury Agent in charge of the Seal Islands in 1890, insists that among the evils which have been preying upon seal life is—

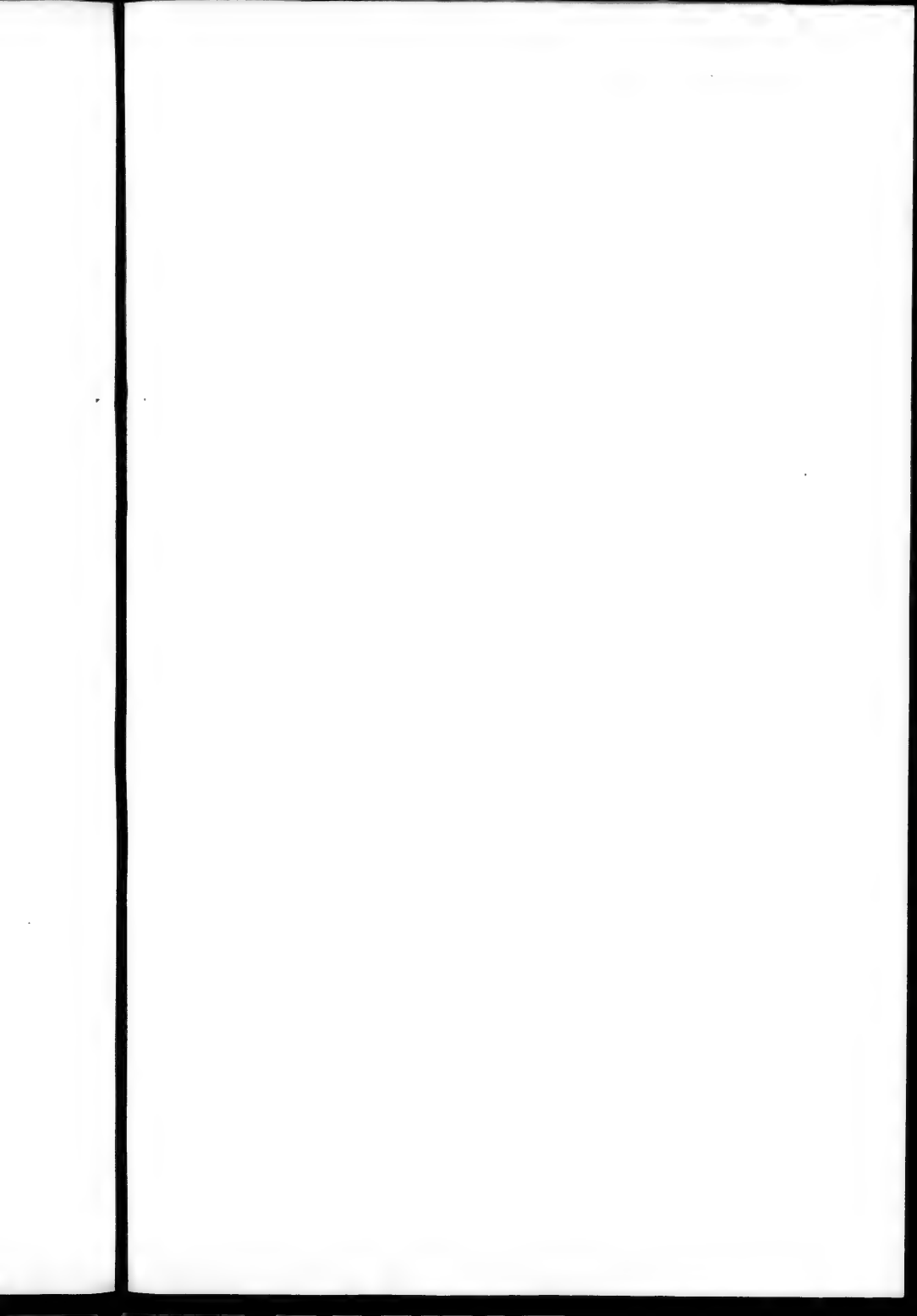
British Case,
Appendix, vol. iii,
Part II, p. 16.

"the indiscriminate slaughter upon the islands, regardless of the future life of the breeding rookeries."

Another Special Agent, Joseph Murray, in 1890 points out that after twenty years of Government

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supervision, shelters for watchmen on the rookeries are required, the plain inference being that constant watching during the breeding season has been impossible.

The diminution of seal life is ascribed to the slaughter of the male seals.

Mr. Tingle was United States' Treasury Agent in charge of the islands from the 29th May, 1885, until August 1886, and from May 1887 to August 1887, and again from May 1888 until 1890.

Since then, and now, he is Superintendent for the present lessees—the North American Commercial Company. In his examination in 1889 he said:—

"When I took charge of the islands they were practically without protection. The Government had one cutter to cruise in Behring Sea and the Arctic Ocean."

Four years after Regulations had been enforced upon the United States' Seal Islands, the United States' Administration admitted to the Senate that by an ill-conceived Regulation the seals on the Island of St. Paul (one of the Pribyloff group) were being exterminated.

A reference to the records shows that other valuable forms of marine life have been almost exterminated on the Atlantic coasts of that country, wherever their preservation depended upon the jurisdiction and management of the United States or of any one State.

Within the last two years it has been officially reported that, through the absence of any effort on the part of the United States to protect the whale, the walrus, the cariboo, or the buffalo, those valuable articles of commerce and of food have almost disappeared.

The United States' General Agent of Education for Alaska reported in 1890 that, owing to relentless hunting, the supply of food upon which the natives in that part of the United States depended was cut off, and that the process of—

"slow starvation and extermination has commenced along the whole of the Arctic coast of Alaska."

The destruction of the sea-otter has gone on within a short distance of the coasts of the United States. It is said:—

"There will be great destitution among the people of Alaska because of its disappearance."

H. R. 9889,
60th Cong., 2nd Sess.,
p. 155.

"Congressional
Records," Vol. II,
Part III, 49th Cong.,
1st Sess., 1874,
p. 2266.

51st Cong., 2nd Sess.
Senate Ex. Doc.,
p. 14.

Elliott's "Report on
Condition of Alaska,"
1874, p. 57.

The sea-otter, which Mr. Jackson reports as now near extermination, was the subject of official report.

In 1874 Mr. Elliott proposed protective measures.

On this subject Mr. Elliott further remarked :—

Ibid., pp. 55, 56.

"When the territory came into our possession, the Russians were taking between 400 and 500 sea-otters from the Aleutian Islands and south of the Peninsula of Alaska, with perhaps 150 more from Kenai, Yakutat, and the Sitkan district; the Hudson's Bay Company and other traders getting about 200 more from the coast of Queen Charlotte's and Vancouver Islands, and off Gray's Harbour, Washington Territory.

"Now, during the last season (1873), instead of less than 700 skins, as obtained by the Russians, our traders secured not much less than 4,000 skins. This immense difference is not due to the fact of there being a proportionate increase of sea-otters, but to the organization of hunting parties in the same spirit and fashion as in the early days above mentioned. The keen competition of our traders will ruin the business in a comparatively short time if some action is not taken by the Government.

Ibid., p. 56.

"As matters are now conducted by the hunting parties, the sea-otters at Saanach and the Chernobours do not have a day's rest during the whole year. Parties relieve each other in succession, and continual warfare is maintained."

During the examination of Dr. H. H. McIntyre, Special Agent of the Treasury Department of the United States, before the Congressional Committee in 1880, the following questions and answers indicate a complete failure on the part of the United States to enforce the Regulations which were adopted for the protection of the sea-otter :—

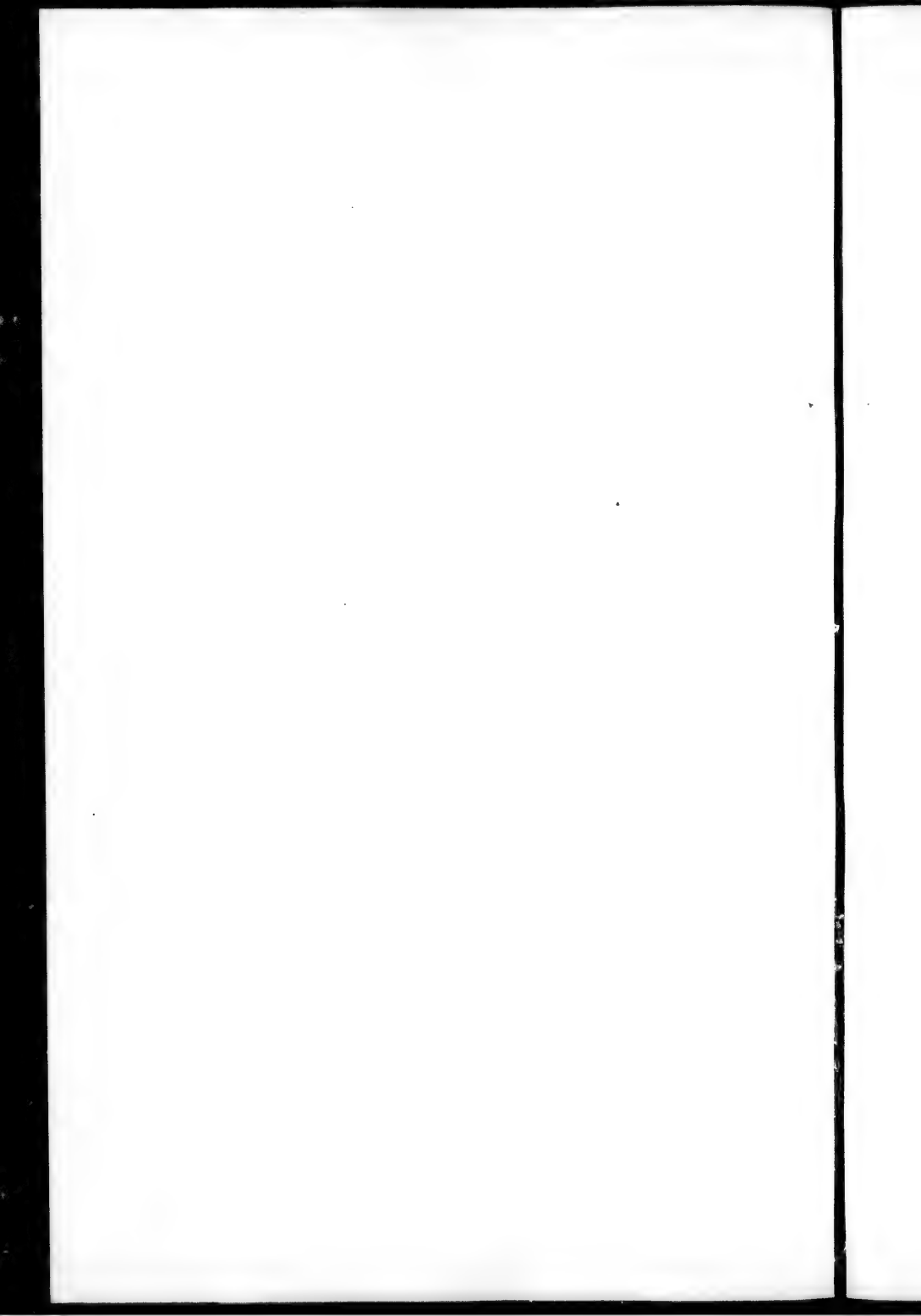
Dr. H. H. McIntyre,
H. R. 3883,
50th Cong., 2nd Sess.,
pp. 123, 124.

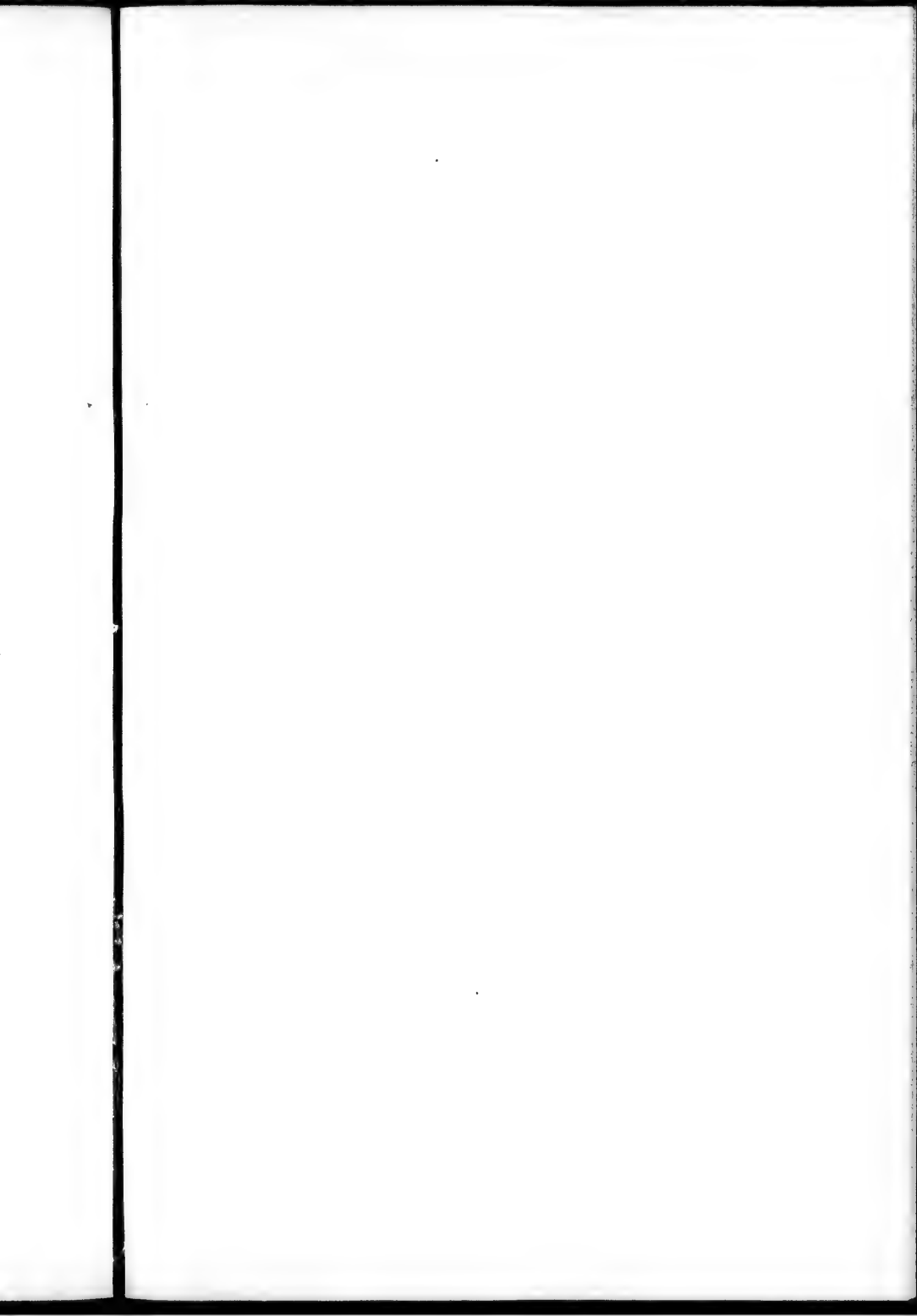
"Q. Are there any laws for the protection of the sea-otters against the depredations of the hunters?—A. They were at first fully protected by a Law which prohibited the killing of any fur-bearing animal in Alaska, but the regulations of the Treasury Department under this Law have been gradually relaxed, first by allowing white men who were married to native women to engage in hunting them, and allowing schooners to be fitted out for their pursuit, until, at the present time, there seems to be almost no restriction upon the business.

"Q. Formerly, was the hunting limited entirely to the natives?—A. Yes, Sir.

"Q. Were they allowed to kill all kinds under the Law?—A. No, Sir; but they have always killed, almost indiscriminately, old and young."

Professor Allen, who is referred to in the United States' Case as an authority on these





questions, gives a history of the extinction of the buffalo, and tells of the failure of the United States' authorities to enforce Laws or Regulations which, in his opinion, would have preserved this article of food and commerce.

After citing numerous instances of the wanton and uncalled-for slaughter of the buffalo, Professor Allen says :—

"These facts are sufficient to show that the present decrease of the buffalo is extremely rapid, and indicate most clearly that the period of his extinction will soon be reached unless some strong arm is interposed in his behalf. As yet no adequate Game Laws for the protection of the buffalo, either by the United States and Territories included within its range, or by the General Government, have been enacted."

Extracts from
"History of the
American Bison (*Bison
Americana*)," by
Joel Asaph Allen,
9th Annual Report,
United States' Geo-
logical Survey, 1875,
pp. 556-559.

Professor Baird is quoted as follows :—

"As these animals range almost entirely within the territories of the United States, it is within the province of Congress to enact laws prohibiting their destruction, but the difficulties lie in the matter of enforcing them."

A further quotation from a long letter by Mr. Blackmore contains the following passage :—

"The necessity, as suggested by Mr. Allen, for protection of the buffalo by legislation is self-apparent. With the great economy endeavoured to be introduced into each Department of the Government of the United States, it is difficult to understand how the Executive, while they enforce a heavy tax upon each seal which may be killed in Alaska, has neglected to avail themselves of such a fruitful source of revenue as that which might be derived from buffalo pelts. A tax of 5 dollars on each skin, which could have been easily imposed and collected—under heavy penalties and forfeiture of all skins not having the Government duty stamp thereon—would realize not less than 1,000,000 dollars per annum, even supposing that the number of buffaloes annually killed for their skins were only 200,000, in lieu of upwards of 1,000,000. The number slaughtered for their skins, with a tax on each skin of 5 dollars, would during the three years in question have produced a gross revenue of 15,000,000 dollars, or nearly 3,000,000^l. sterling

"I suggested this remedy at the time, but, although referred to by the press, it was not attended to, and it is now almost too late. It is of little use to 'lock the stable door after the steed has been stolen.'

"The evils to the citizens of the United States arising from this wholesale and wanton destruction of buffalo during the three years referred to may be summarized as follows :—

"1. Loss of good and nutritious meat of upward of 3,000,000 of buffalo.

"2. Loss of revenue to the United States of 15,000,000 dollars, assuming that a reasonable tax of 5 dollars had been imposed on each pelt.

"3. Principal Indian tribes on the plains being deprived of their annual supply of food for the winter, and only receiving short rations on their reservations, driven on the war-path.

"4. Cost of Indian wars in the lives of the citizens of the United States, and money.

"Pioneer settlers deprived of their supply of winter food. Prior to 1870 the western settlers, from Eastern Kansas to the base of the Rocky Mountains, looked to the buffalo as their winter store-house."

In his concluding remarks on what he calls the "destruction and reckless waste of the buffalo," Professor Allen writes:—

"The fur-bearing species, even when hunted to excess, are seldom destroyed wantonly, though often imprudently, the trapper blindly considering only his immediate profits. In the case of the harmless, herbivorous species, the ungulates especially, self-interest, it would seem, would prompt an economical treatment of the game in newly-settled districts. But the history of America shows that no such principle has here been regarded, where other animals than the buffalo—as the elk, moose, deer, pronghorn, and mountain sheep—have been slaughtered with the utmost recklessness.

"The buffaloes, from their great numbers and the little tact required in their capture, have probably been the victims of indiscriminate, improvident, and wanton slaughter to a greater extent than any other North American animal. As already stated, thousands are still killed annually merely for so-called 'sport,' no use whatever being made of them; thousands of others of which only the tongue or other slight morsel is saved; hundreds of thousands of others for their hides, which yield the hunter but little more than enough to pay him for the trouble of taking and selling them, while many more, though escaping from their would-be captors, die of their wounds, and yield no return whatever to their murderers. Of the hundreds of thousands that for the last few years have annually been killed, probably less than a fourth have been to any great extent utilized."

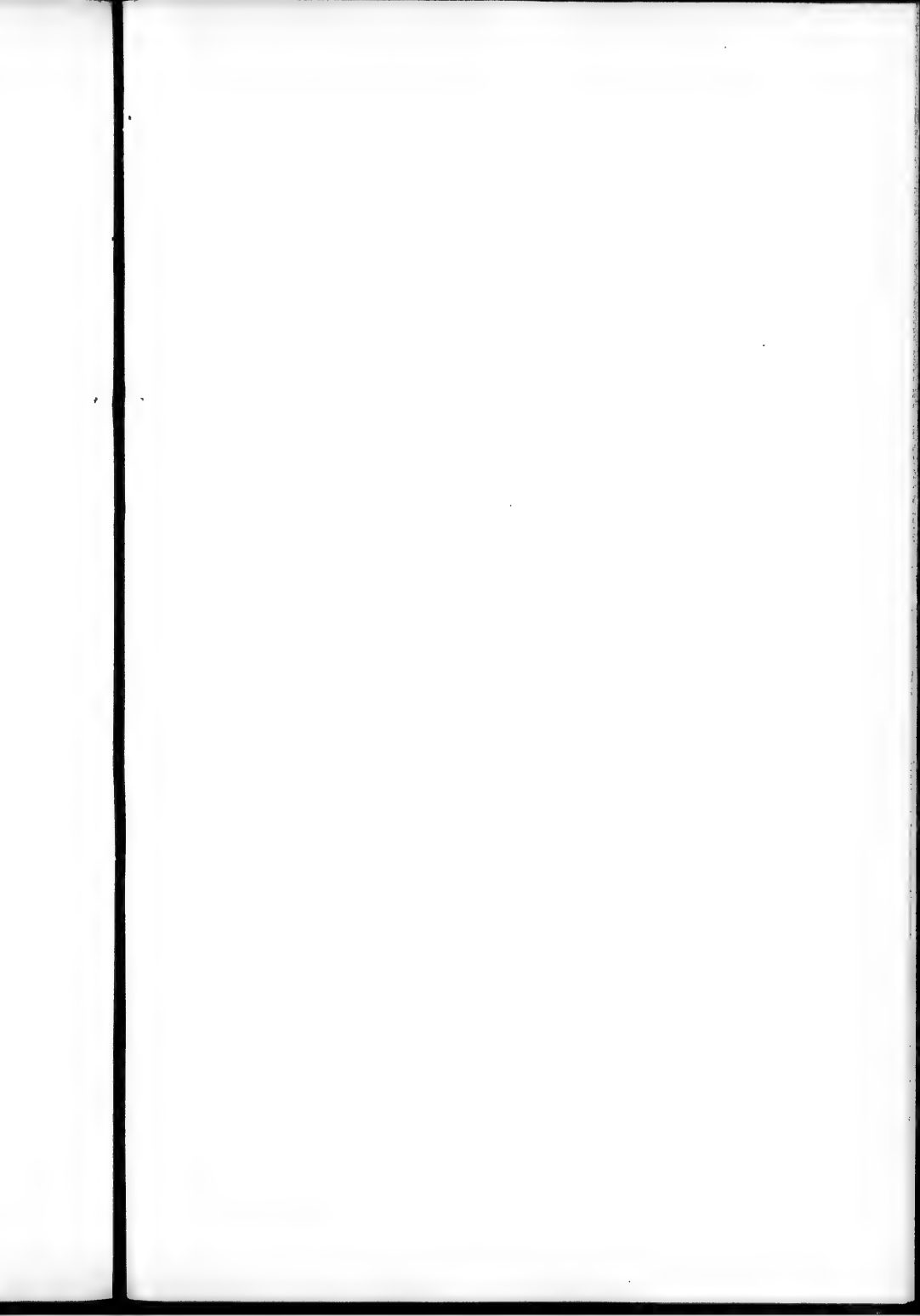
Mr. Jackson has also referred to the decrease of the buffalo in his Report. He states:—

51st Cong., 2nd Sess.,
Senate Ex. Doc.
No. 14, pp. 2, 3.

"As the great herds of buffalo that once roamed the western prairies have been exterminated for their pelts, so the whales have been sacrificed for the fat that encased their bodies, and the bone that hung in their mouths. . . ."

44th Cong., 1st Sess.,
Ex. Doc. No. 88,
p. 89.

A Petition was presented as far back as 1872 by certain citizens of the State of Massachusetts,
[862]



praying the enactment of a law for the protection of walrus in the Arctic Seas.

It was referred to Special Agent Bryant, who reported:—

"These animals, being nearly allied to the seals, have similar habits. They are found occupying the western shore of the Peninsula of Alaska, thence through British Bay westward to Behring Straits, and north as far as Point Barrow, together with the islands of the Diomedes, St. Lawrence, St. Matthew, and one of the small islands of the fur-seal group, all in Alaska waters, and also on portions of the coast of Eastern Asia, opposite. During the winter months they are believed to be nearly all south of Behring Straits. As soon as the bridge of ice closing these straits in winter becomes broken by thawing in spring, the loose ice is borne and held by the current along the line of permanent ice extending across from the American to the Asiatic shores, in about the latitude of 70° north. The females pass through these straits while the males remain behind, going mostly westward along the line of floating ice, where they bring forth their young and nurse them, remaining till late in autumn; when the freezing of the sea commences they again return south. At this time the natives secure their supply of winter food and skins for covering their houses and boats.

"These animals yield about 20 gallons of oil, and from 15 to 20 lbs. of ivory each. They are not considered of sufficient value to pay to cruise for them alone, but when the vessels first arrive in this sea, and are cruising along this line of ice, waiting for the whales to arrive or show themselves, they come upon large herds of these animals, and take them for pastime or the lack of more profitable game.

"Knowing all the facts as set forth in the inclosed Petition to be a true statement of the case, I earnestly recommend the prayer of the petitioners be granted, and would respectfully suggest, as a Supplementary Act to the Act entitled 'An Act to prevent the Extermination of the Fur-bearing Animals in Alaska,' that it be made unlawful to kill, maim, or otherwise injure any walrus on the shores, bays, rivers, coasts, or islands in the Territory of Alaska, or in the waters adjacent thereto, during the months of June, July, and August each year, under pain of incurring all the penalties of the 2nd section of said Act, with its provisions for its enforcement.

"I have, &c.

(Signed) "CHARLES BRYANT,
"Special Agent, Treasury Department.

"Honourable George S. Boutwell,
"Secretary of the Treasury."

The failure of the United States to preserve their marine interests is shown in the following official document.

Mr. Jackson, in a Report which was referred to

the Committee on Appropriations (8th January, 1891), reported :—

51st Cong., 2nd Sess.,
Senate Mis. Doc.
No. 39.
See also United States'
Case, Appendix, vol. i,
p. 370.

"Another large supply of food was derived from the walrus, which once swarmed in great numbers in these northern seas. But commerce wanted more ivory, and the whalers turned their attention to the walrus, destroying thousands annually for the sake of their tusks. Where a few years ago they were so numerous that their bellowings were heard above the roar of the waves and grinding and crashing of the ice-fields, this year I cruized for weeks without seeing or hearing one. The walrus, as a source of food supply, is already practically extinct."

Concerning the salmon with which the rivers of Alaska heretofore abounded, the official records of the United States show :—

51st Cong., 2nd Sess.,
Senate Ex. Doc.
No. 14, p. 8.

"In the past the natives, with tireless industry, caught and cured for use in their long winters great quantities of fish, but American canneries have already come to some of their streams, and will soon be found upon all of them, both carrying the food out of the country, and by their wasteful methods destroying the future supply. Five million cans of salmon annually shipped from Alaska, and the business still in its infancy, means starvation to the native races in the near future."

Captain Healy, of the United States' steamship "Bear," on the same subject, reports :—

51st Cong., 2nd Sess.,
Senate Mis. Doc.
No. 39.

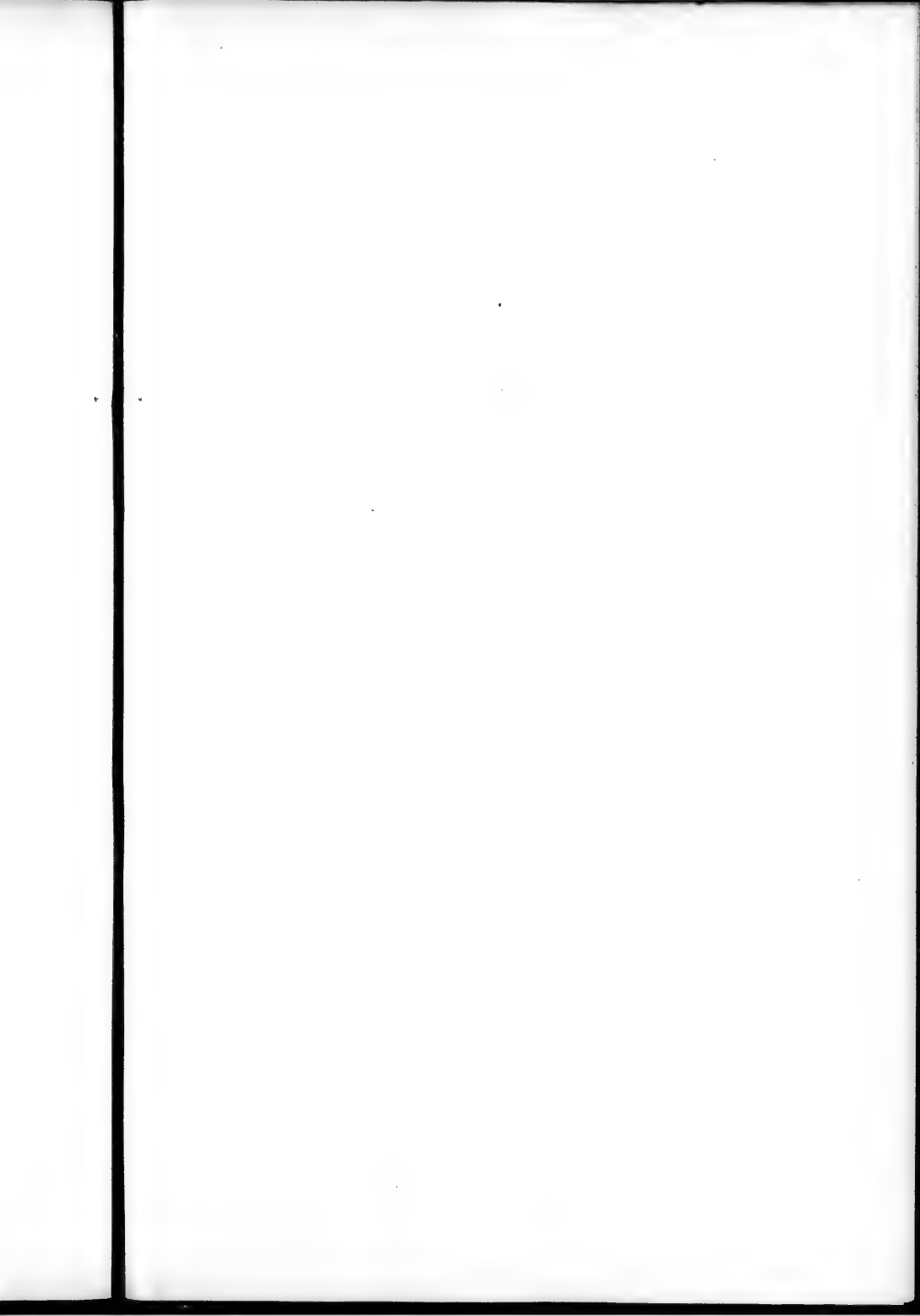
"The white men [are also erecting canneries on their best fishing streams, and the usual supply of fish is being cut off. With the advent of improved breech-loading firearms, the wild reindeer are both being killed off and frightened away to the remote and more inaccessible regions of the interior, and another source of food supply is diminishing."

The various Reports of the Commissioners of Fisheries for the United States repeatedly refer to the decrease, and in many cases to the extinction, of the anadromous fishes once found in great abundance in the rivers which empty into the Atlantic coast of the United States, due in some cases to the absence of proper Regulations for their protection, and, in most cases, to the failure to enforce the Regulations adopted by the Legislatures of the different States.

In the Sixteenth Annual Report of the Commissioners of Fisheries for the State of New York (for the year 1887) the following appears :—

Assembly Documents,
State of New York,
1888, Part V, No. 80,
p. 16.

" . . . The Law passed at the last Session of the Legislature requiring shad-nets to be taken up one day in each week, so as to permit a free run to the spawning-grounds,



is of no utility, as a clause was inserted, in the interest of the lower river netters, confining its application to that part of the river above the northern line of Westchester County, where it is not needed, as the blockade is all below. Here, as in most cases where measures of public utility interfere with local or private interests, the power of the latter seems to be paramount in legislation . . ."

" . . . Spearling, netting, and every device declared contraband by the law now ran riot on Otsego Lake, and a week had not elapsed before the lake was fairly gutted. The situation is thus described by an eye-witness at Cooperstown :—

Assembly Documents,
State of New York,
1888, Part V, No. 30,
pp. 24, 25.

"The spawning-beds have been swept clean, over 1,800 lbs. of trout (not one of them weighing less than 5 lbs.) being lugged off to Oneonta as the result of one night's rascality, and bushels of spawn left rotting on the shore. Many of these fish—all of them utterly unfit to eat—being taken in the very act of parturition, were peddled through our own streets at 10 cents per pound, and all besmeared at that with spawn. . . ."

In the Seventeenth Annual Report of the Fish Commissioners for the State of New York, being for the year 1888, it is stated :—

" . . . At this point the Commissioners desire to again suggest the necessity of some Commission, appointed from or outside the Legislature, to codify the Game and Fish Laws of the State, and make them clear and definite, as no proper and systematic game protection is possible while the present mass of vague, conflicting, and contradictory Statutes remain in force. The law should be clear and direct, and free from reservations and exceptions, so that there can be but one construction placed upon its meaning. As the law stands at present, conviction is almost impossible, and an offender needs but a skilful lawyer to escape punishment. . . ."

Ibid., 1889, Part VI,
No. 29, p. 16.

In the Eighteenth Annual Report of the Commissioners of Fisheries for the State of New York it is stated :—

" . . . The greatest difficulty in the way of thorough and successful protection of game and fish, is found in the conflicting and misleading laws now on our Statute-books.

"The Commissioners again call attention to the necessity of codifying the Game Laws of the State. The laws are vague, conflicting, and contradictory, and their proper enforcement is naturally difficult, and at times impossible. They should be codified, made clear, and definite. . . ."

Ibid., 1890, Part III,
No. 14, p. 7.

In the Sixth Biennial Report of the Commissioners of Fisheries for the State of Michigan it is stated :—

" . . . The great difficulty with the laws has been that responsibility for their enforcement was not clearly lodged

Joint Documents, State
of Michigan, 1884,
vol. 1, No. 9, p. 11.

anywhere, and no provision had been made for it either by suitable legislation or by appropriations to secure the necessary agents, and to defray their expenses in enforcing the laws. . . ."

Joint Documents, State of Michigan, 1884, vol. i, No. 9, p. 11.

" . . . The notable decline in the numbers of black bass along the Detroit and St. Clair Rivers and Lake St. Clair is due principally to their being taken in nets, which is prohibited by law. . . ."

Ibid., p. 12.

" . . . We have heard from many fishermen the confession that their unlawful fishing was ruining the fisheries, accompanied by the statement that their next neighbour was engaged in unlawful ways of fishing, and if they ceased it others would step into their places to continue it, and they might as well continue and secure their share while the fish lasted, as to leave it all to the others. Such a statement, and we have heard it in substance from many fair-minded and intelligent men in different parts of the State, is a confirmation of all that the Commissioners have been trying to enforce upon the attention of the public since the first Report was made, in brief, that the fisheries of the State were gradually being exhausted, and would, within a time capable of being fixed with some degree of certainty, be rendered comparatively useless by illegal fishing if unrestrained by fair statutory regulation. . . ."

Ibid., p. 40.

" . . . Another impediment to the rapid accomplishment of the desired result is the absence of protective legislation of a sufficiently stringent character to prevent unnecessary waste of the fish during the critical period of spawning, and the erection or maintenance of impediments to their movements in reaching the spawning-grounds. . . ."

In the Seventh Biennial Report of the Commissioners of Fisheries for the State of Michigan it is remarked:—

Joint Documents, State of Michigan, 1886, vol. i, No. 8, p. 7.

" . . . Special attention is asked to this department of the Commission's work.

" In presenting this branch of our subject, the industrial fisheries of Michigan, we ask all readers to bear in mind this brief summary of the whole matter.

" The industrial fisheries are of great value.

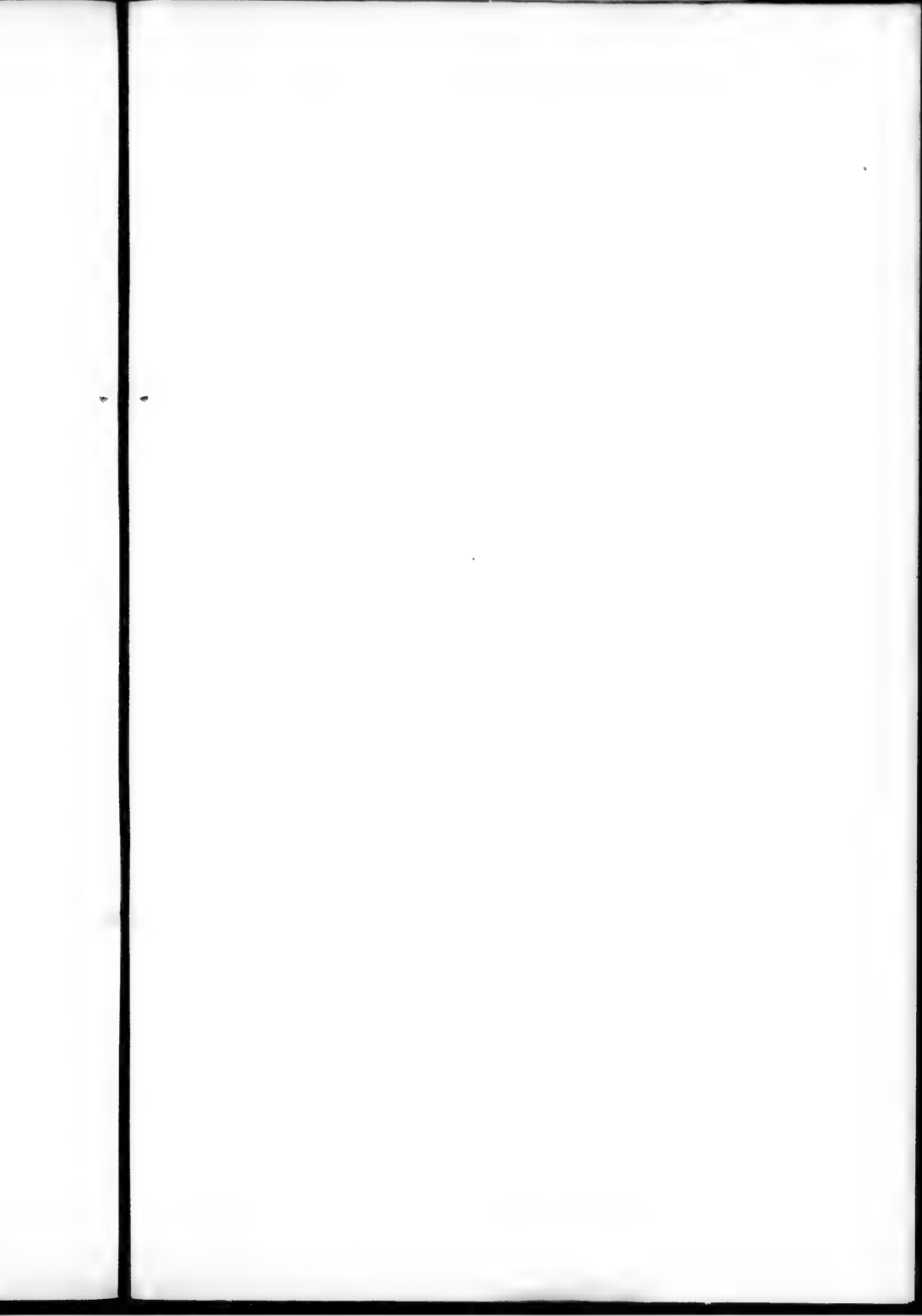
" They are being speedily ruined. . . ."

Ibid., p. 27.

" . . . The State by its legislation of the past thirty years stands committed to the regulation of the fisheries, just as by its legislation and appropriations it does to artificial propagation of food fishes; why not make both as efficient and profitable as possible by taking this next and most logical step, in practical effect asserting that it is right to make laws, and it is right to enforce them, thereby rendering effective all measures taken by the State to restore and preserve the fisheries?"

Ibid., Appendix, p. 97.

" . . . From the foregoing it appears that around our coast of 2,000 miles, at the time Michigan became a State, the waters were teeming with fish in quantities deemed inexhaustible by the people of that generation. Fifty years



have made as great a change in those fisheries as has been manifested in some other industries, but the change here has been an unfortunate one. As reliable statistics as could be found of fishing product prior to 1875 are given in a note to this paper. A comparison of them, very briefly, with a valuable Report made by Mr. Lyman A. Brant, as Statistical Agent of the State Board of Fish Commissioners, on the fishing season of 1885, will enable us to gather a lesson worth learning. For example, take the east shore of Lake Michigan. It appears that in 1859 this coast yielded 17,200 barrels of fish; in 1885, 12,789; in 1859 the fishing was done with 5,350 gill-nets and 58 sail-boats; in 1885 there were in use 11,074 gill-nets, 107 pound-nets, operated by 23 steam-tugs and 91 sail-boats. While the capacity of the apparatus was increased in efficiency more than 200 per cent., the product fell off more than 35 per cent. The earlier operations were conducted comparatively near the shore; those of the last season, with improved sail-boats and steam-tugs, 25 and 30 miles out into the open lake. With a coast-line the same in both cases, the acreage of waters covered is probably more than trebled. . . ."

" . . . What is the significance of these facts? Ten times the space might easily have been filled without exhausting the authorities or facts. Such facts and their meaning, as one charged with a measure of responsibility in the supervision of the State fisheries, I deem it my duty to lay before this audience. Even the briefest historical notice of the fisheries leads inevitably to one conclusion, and forces upon us the urgent inquiry, Can our fisheries now be saved, or is their ruin inevitable?"

Joint Documents, State
of Michigan, 1886,
vol. 1, No. 8, p. 101.

In the Annual Report of the Fish Commissioners for the State of Ohio for 1888:—

" . . . There is also much difficulty in securing good observance of the law, as will be seen by reference to the report of expenditures for prosecutions, a little more than one-third of the expense of this Department coming from violations by lake fishermen. . . ."

Executive Documents,
State of Ohio, Part I,
1888, p. 647.

The lobster, which was found within territorial waters on the coasts of the New England States, and formerly a source of great commercial profit, is almost extinct in United States' waters, notwithstanding the adoption of legislation for its preservation.

The mackerel, which frequented annually the New England coasts in enormous numbers, is now found chiefly in the waters along the shores and off the coasts of the Dominion of Canada. Owing to the use by United States' fishermen of a destructive engine known as the purse-seine, operating close to the territorial limit of 3 miles, and sometimes within it, this fishery of Canada

shows signs of exhaustion. A short history is appended to the British Counter-Case for the purpose of indicating inability on the part of the United States in the past to preserve an important fishery when within their jurisdiction. The history of this fishery illustrates also the great difficulty experienced by the Canadian authorities in preserving that fishery upon the Canadian coast, owing to the absence of co-operation on the part of the United States for its protection. While it is now proposed that the United States and Great Britain shall discuss protective measures to be adopted for the protection of this fishery, it may be said without fear of contradiction that the United States would not entertain for a moment a proposition similar to the proposal put forward touching the seal fishery in Behring Sea, though it could be proved, as the Appendix will show, that total abstention on the part of United States' citizens from all enjoyment of this fishery would enable the Canadian Government to protect and preserve the same for the benefit of mankind and as trustee for the world.

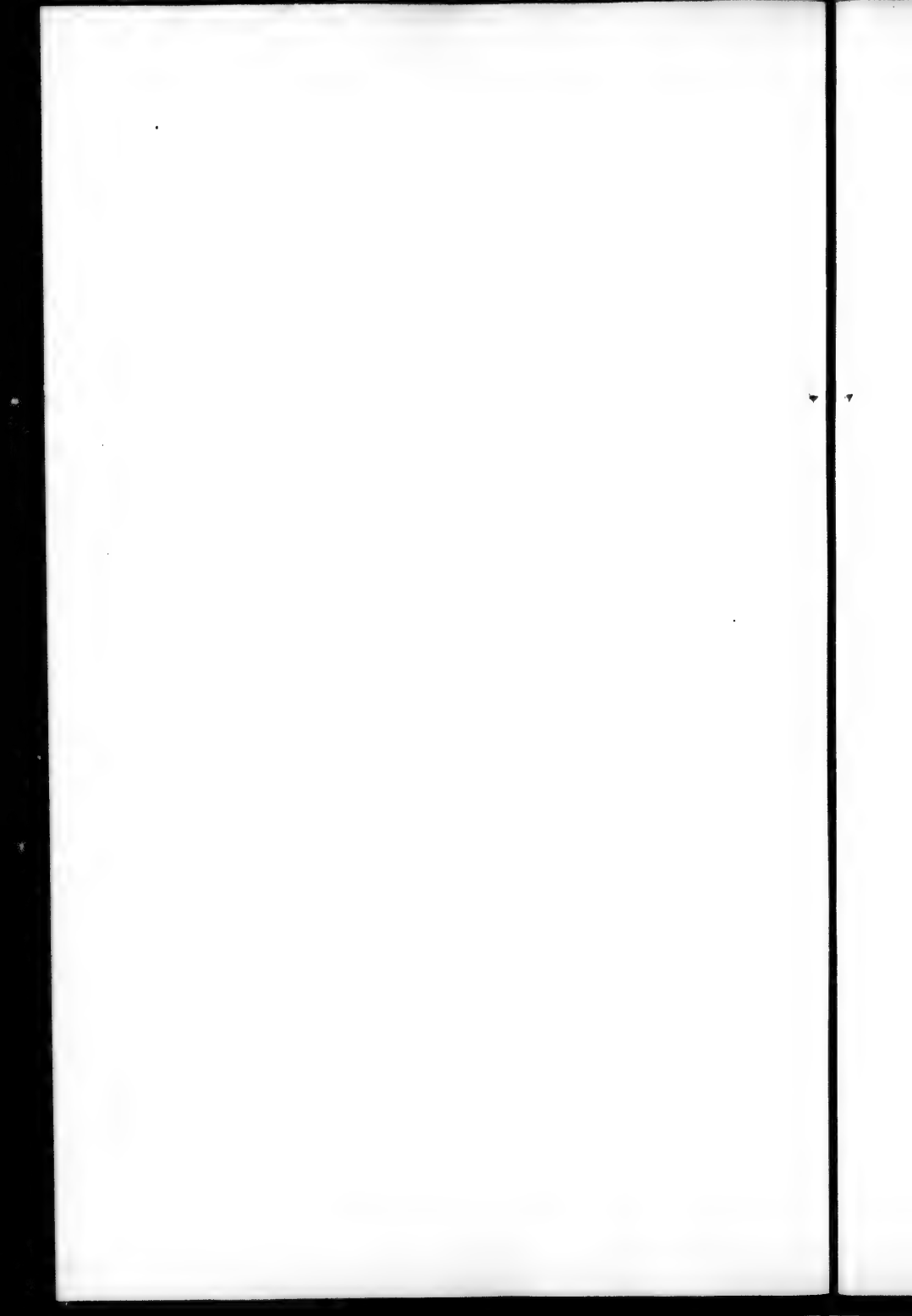
The Fisheries of the Great Lakes.

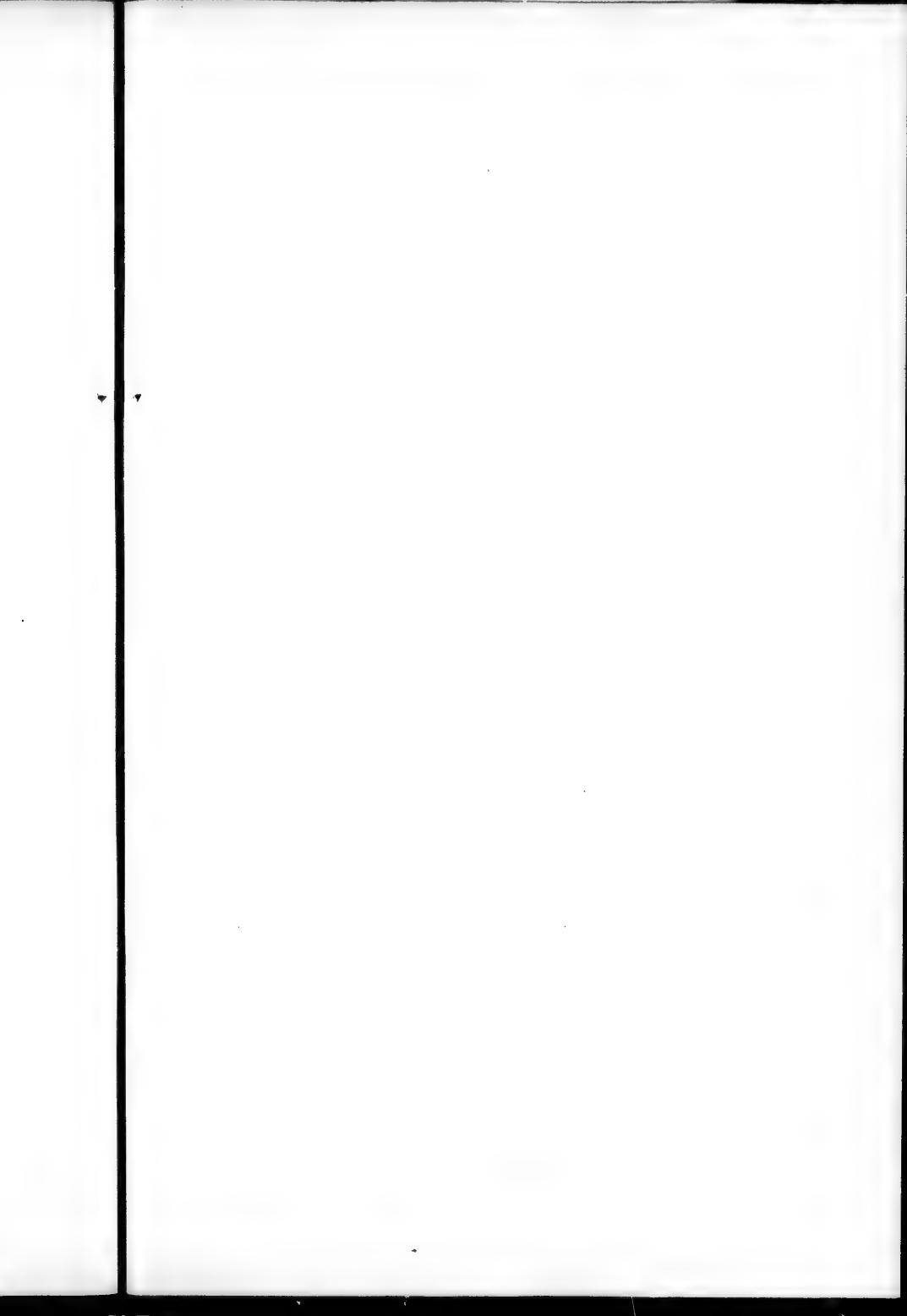
The aggregate area of the Canadian portion of those large fresh-water seas, called Lakes Superior, Huron, Erie, and Ontario, divided by the boundary-line between Canada and the United States, may be estimated as follows :—

				Square Statutory Miles.
Lake Superior	..	..	..	32,000
" Huron, including Georgian Bay	..	..	..	24,000
" Erie	..	..	..	10,000
" Ontario	..	..	..	6,700
Total	..	..	..	72,700

All of these waters formerly abounded in whitefish, salmon trout, herring, sturgeon, bass, pickerel, &c.

The failure on the part of the United States to enforce protective measures for fish life, if not counteracted to some extent by the rigid Regulations maintained on the Canadian side of contiguous waters, would have depleted these valuable fisheries long ago.





The comparative condition of the fisheries on the United States' shores has attracted the attention of the State authorities, and a movement has begun in the States bordering on Canada for the protection and improvement of the lake fisheries.

A Report of the United States' Commissioner of Fish and Fisheries for 1886 contains a review of the fisheries of the Great Lakes in 1885. It is compiled by Messrs. Hugh M. Smith and M. M. Snell, with an introduction and description of fishing-vessels and boats by Captain J. W. Collins.

The Tables given in this work show that during the five years from 1880 to 1885 the total quantity of fish caught was as follows:—

	1880.	1885.	Increase.
	Lbs.	Lbs.	Lbs.
In Canada ..	11,473,000	27,378,180	15,905,180
In United States..	45,600,125	76,423,728	30,823,603

The use of pound-nets prevails to a much greater extent on the United States' side of the lakes: while in 1885 there were 213 pound-nets licensed by the Canadian Government from Port Arthur, on Lake Superior, to Port Maitland, on Lake Erie, the United States' Returns show 1,815, one-half of which were on Lake Erie alone. The United States operate the fisheries in these contiguous waters with nine times the number of pound-nets and five times the number of gill-nets as used by Canada.

A Joint Commission was appointed to confer on the subject of fish protection in the international waters between the Canadian provinces and the State of New York.

General Richard U. Sherman, of New York, on behalf of the Special Committee representing that State for this purpose, at the meeting of the Fish and Game Commissioners at Hamilton, Ontario, the 8th December, 1891, reported, among other things:—

" . . . That the food fish supply of the Great Lakes has been for the past thirty years suffering rapid diminution is too apparent to need statistical proof. On the New York side of Lake Ontario, where formerly salmon trout, whitefish, and even the lordly salt-water salmon were so abundant as to furnish all the near markets with an abundant supply at prices within reach of the means of

Report of Ontario Fish and Game Commission, 1892, p. 270.

the day labourer, the product now scarcely recompenses the netter, and these fish, once so abundant and cheap, are no longer available for food for the multitude, but have become table luxuries to be enjoyed only by people of ample means. On the Ohio side of Lake Erie there has been a nearly equal falling-off of the higher grades of fish. . . ."

Report of Ontario
Fish and Game
Commission, 1892,
p. 271.

" On the Canada side of these waters the supply, though showing each year an additional falling-off, yet holds good for profitable netting, and it is from the fisheries of Canadian waters that the principal market supply for the State of New York comes. . . ."

It cannot be denied by the United States that, by the unrestricted use of pound-nets, gill-nets, and other fishing engines, together with an absence of enforced close seasons, it is within the power of either Canada or the United States to exterminate the commercial fisheries in these waters.

The following is from the Report of 1892 of the Fish Commissioners of the State of Vermont :—

" Uniformity of Laws.

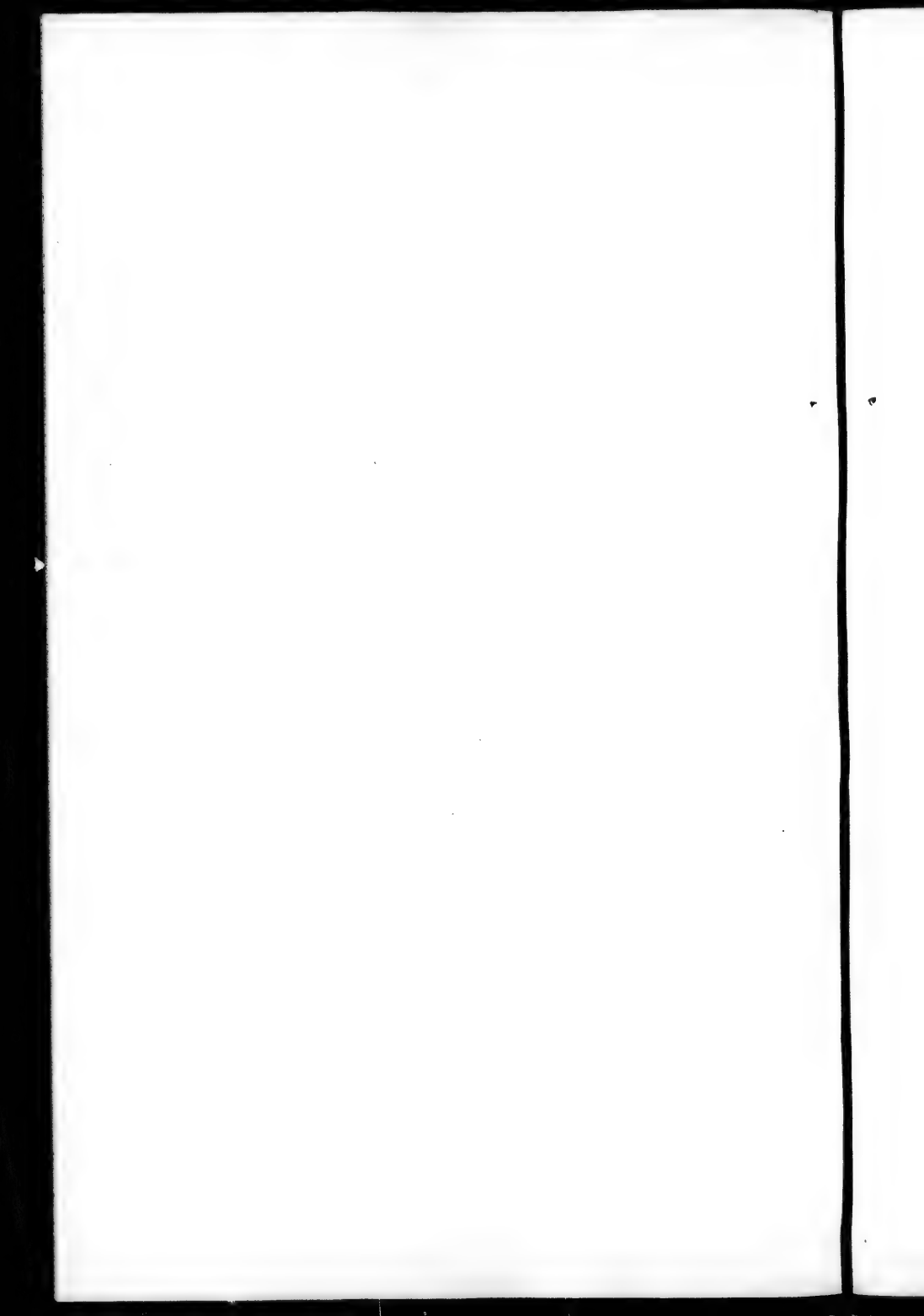
Eleventh Biennial
Report of Fish Com-
missioners, State of
Vermont, 1892, p. 21.

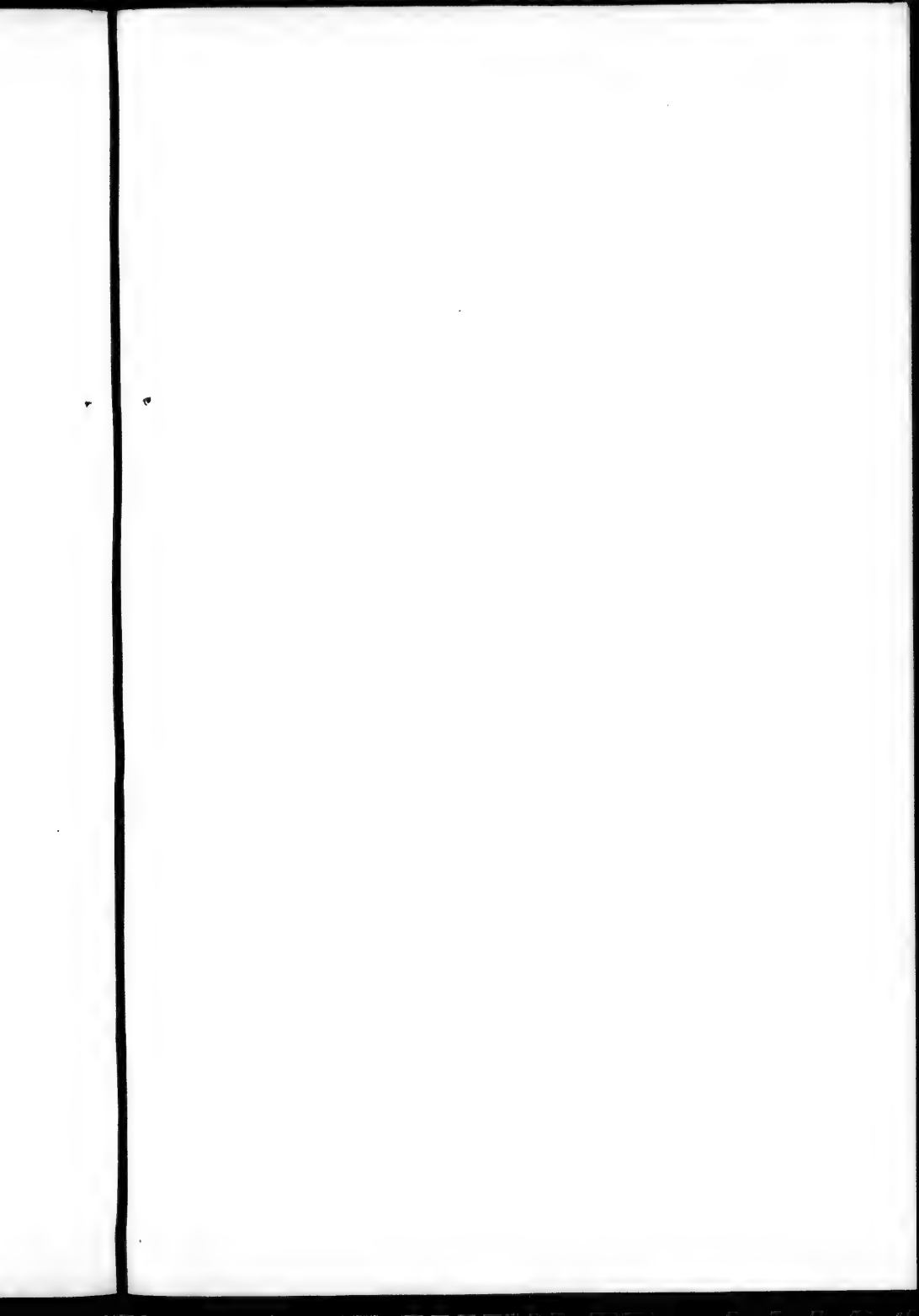
" When similar conditions and seasons prevail in neighbouring States, the operation of the laws for the protection of the fish and game which inhabit such States should be uniform. Many departures from this rule occur in the operation of the laws as between Vermont and the States and provinces contiguous thereto.

" As an illustration, the close season for black bass in Vermont ends fifteen days earlier than in New Hampshire, and the citizens of the former State can take bass from the Connecticut when it is unlawful to do the same thing from the New Hampshire side of the same waters. In fact, it is a question whether it is illegal in Vermont to take bass from the Connecticut at any season, as Section 3873, Revised Statutes, relates to the protection of black bass 'in the waters of the State,' but the west bank of the Connecticut River is the east line of Vermont.

" While the above-mentioned defects have been the subject of remonstrance from the Fish Commissioners of New Hampshire, they are lost sight of when the condition of affairs in the waters of Lake Champlain bordering on the Dominion waters of the same lake is brought to the attention of the Commissioners by the lack of uniformity of existing laws for the protection of fish in these contiguous waters, resulting in a serious injustice to the citizens of Vermont.

" Reference is made to the Canadian custom of licensing fishermen to catch fish by the use of seines in the Dominion waters of Lake Champlain, generally known as Mississquoi Bay. While only a small portion of Lake Champlain is in Canada, the Canadian portion appears to be the spawning-ground for nearly all the wall-eyed pike of the entire lake."





While tons of these fish are taken in seines on their way to and from the spawning-grounds in Dominion waters, it is not lawful to take them in any manner in Vermont waters or to have them in possession.

With this condition of things, our laws are not sustained by public opinion, and consequently it is impossible to enforce the laws against netting in waters contiguous to Canada without great and unwarranted expense.

The Commissioners do not intimate that the laws of Vermont for the protection of fish in Lake Champlain are defective or perfect, but that the Canadian laws should be in unison with them. Much correspondence on this subject has been carried on between the Commissioners and the Canadian authorities. Finally, a full statement of the case was communicated to the Honourable John W. Foster, Department of State, Washington, District of Columbia, and the United States' Government is now considering the question with the Government of Canada. The Commissioners entertain hopes that this correspondence will result in necessary measures being taken for the protection of fish in the waters contiguous to the two countries.

A Special Committee, appointed by the State of New York, met at Rochester in that State on the 10th November, 1891. In a Circular letter of the Chairman, General R. U. Sherman, it was stated that the waters of the Great Lakes separating Canada and the United States (the jurisdiction of each country extending to the middle of the lakes) should be "left to the care of the two Governments (Canada and the United States)." It was proposed that action should be taken to secure "uniform laws with Canada."

Report of Ontario Fish and Game Commission, 1892, pp. 237, 238.

Recognizing the principles of uniformity and mutual interests, it has been agreed between the Administrators of the United States' Government and the Government of Canada to appoint Commissioners to report upon such measures as may be required for the preservation of these fisheries. In the draft Convention care is taken that neither country shall be committed to Regulations whereby, even in order to preserve the fishery, the interests of one country should be sacrificed to those of the other. The Regulations are to be uniform, and the benefit and enjoyment equal.

If pelagic sealing be as free to the world as is

fishing on the cod banks off the coast of Newfoundland, it is interesting to ascertain the position taken by the United States touching the preservation of the latter fishery.

The position of the United States in the cod fishery, it will be observed, is similar to that of other nations touching the fur-seals of Behring Sea.

The late Spencer Baird, Commissioner of Fisheries for the United States, put not unreasonably the views of the United States touching the efficacy of measures to regulate a common fishery on the high seas. Mr. Baird, in 1886, wrote :—

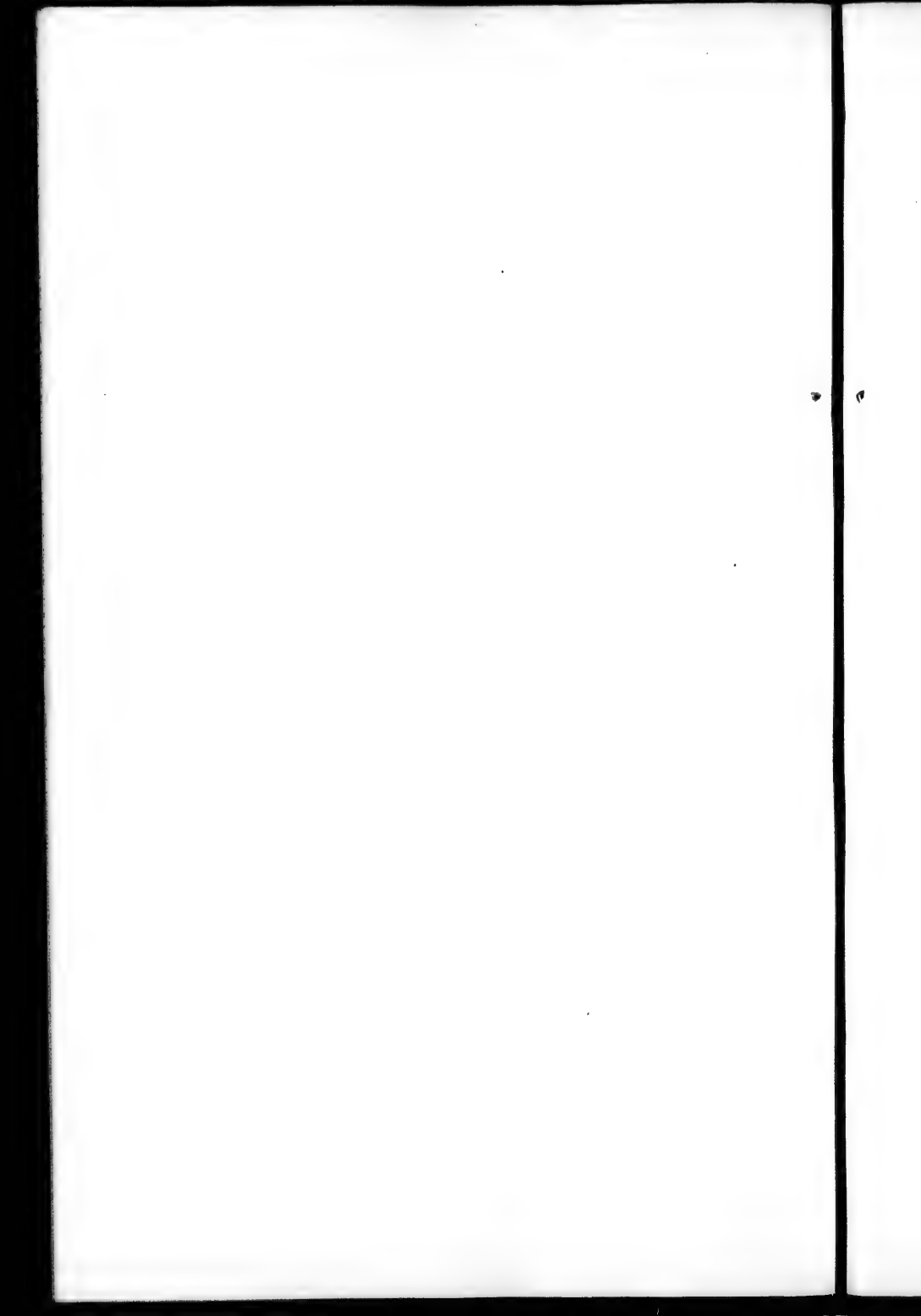
United States' Commission of Fish and Fisheries, Part XIV, Report of the Commissioner for 1886 : Senate Mis. Doc. No. 90, p. 156, 49th Cong., 2nd Sess.

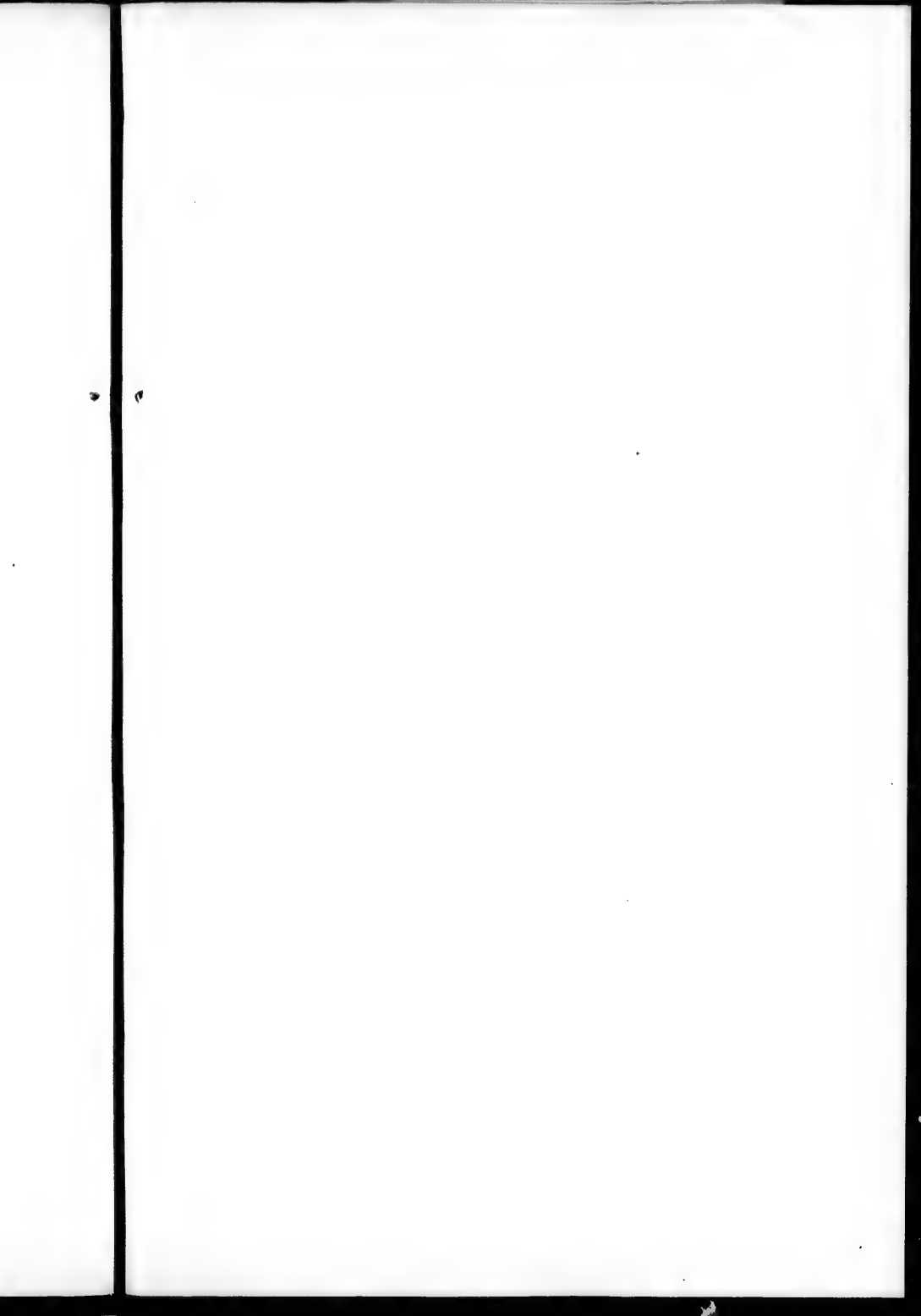
"There is, perhaps, no nation in the world where there are fewer regulations and restrictions in regard to the sea fisheries than in the United States; no response having been made either by the General Government or by the State to the numerous appeals to take the subject under their jurisdiction, and to prevent what are claimed to be improper methods, or unseasonable times of capturing fish, or undesirable modes of preserving them. . . ."

Ibid., pp. 156, 157.

" . . . The propriety of international agreement in regard to certain modes of fishing has not unfrequently been urged, and more particularly it has been proposed that the United States and Great Britain have an Agreement to prohibit the use of the trawl or long-line on the banks of Newfoundland and in other portions of the high seas. Apart, however, from the questionable propriety of interfering with this mode of fishing, there would be the consideration of enforcing such rules, as it could only be done by means of a fleet of Government vessels of both nations stationed in different portions of the high seas, involving, of course, the danger of irritation at any attempt at enforcement, especially by the vessel of the opposite nationality.

"Again, even if this could be effected and enforced by the United States and Great Britain in respect to their own subjects, there is no probability that other nations would enter the Convention or consider themselves bound by its provisions; and without the co-operation of armed vessels of other nationalities, any attempt at regulating the fishermen of the same would be resented by their respective Governments, and danger of war ensue. If there were no interference with the subjects of other Governments, the effect would be simply to give them the monopoly of capture by the prohibited apparatus, or during the prohibited season to other parties, and thus a season's loss would be inflicted upon the subjects of the consenting nations. It might also be a question how far any Government could pretend to interfere with the fishing operations of its own subjects on the high seas, provided, of course, these did not involve any criminal action, or such as is, by common consent, allowed to be a matter of jurisdiction. Of course, the vessels and their catch might be controlled





on their entering port, but there would seem to be nothing to prevent the taking of the fish to a foreign nation. It is for these and other reasons, that need not here be detailed, that most careful consideration should be given to any proposition looking towards the restriction or regulation in any way of the sea fisheries of the United States, whatever may be the practice and policy of other nations. . . ."

When the constant worrying, driving, re-driving, raiding, and other practices on the breeding-islands are considered, it is surprising that seals are found there in large numbers at the present time.

We know, however, that while in time these causes work ruin upon a rookery, seal life in the South Shetlands, and elsewhere, withstood for years severe and constant depredations.

The high order of instinct of the fur-seal is referred to in Mr. Elliott's work. Elliott's Report on Alaska, 1875, p. 128.

Mr. Elliott reports that the visit of many ships, the rattling of their anchors and chains, and the scraping of their keels on the beaches of the islands— Tenth Census, United States, 1880, vol. viii. pp. 26, 27.

"would alone drive every seal away, and over the Russian grounds, in a remarkably short space of time."

The Regulations of the Seal Company recognize that seals may be driven away from the islands. They consequently provide against:—

1. Killing on the beaches.
2. Killing by fire-arms, or "by any other means tending to drive seals away from the islands."
3. The use of fire-arms while seals are on the islands.

4. Dogs prohibited from the islands.

The fur-seals resort to the islands for the purposes of procreation primarily.

Under the system of administration they are killed while on the islands for these purposes.

Mr. John F. Miller, President, Alaska Commercial Company, has testified that:—

"any disturbance on the island has a tendency to drive away the seals. The fewer people we have there, and the fewer vessels, the better." 44th Cong., 1st Sess., H. R. No. 628, p. 84.

And—

"If there were many vessels anchored about there, or much confusion going on—plying of boats and loud noises upon the islands—it would have a tendency to drive the seals away. The more quiet the islands are kept during the time the seals are there the better." Ibid., p. 40.

And—

44th Cong., 1st Sess.,
H. R. No. 629, p. 40.

"Extraordinary sounds, such as the noises of gun-shots, and the smell of the carcasses of the slain seals, and the blood of them, tend to frighten these creatures away."

"They are very sensitive to smell; their sense of smell is very keen; in fact, they are very peculiar animals, and require careful management."

Before the Congressional Committee in 1888, Mr. W. Gavitt, an Agent of the United States' Treasury Department, testified that seals were easily frightened, and the discharge of fire-arms has a tendency to frighten them away.

Mr. H. A. Glidden testified:—

H. R. No. 8885,
50th Cong., 2nd Sess.
Ibid., p. 26.

"The seal is a very sensitive animal, and it does not like to be disturbed, and it must not be disturbed. If they are they will not go there at all."

While many seals have doubtless been driven from these islands by causes such as those just mentioned, it is by no means established that these seals have disappeared altogether.

In the study of the salmon it is found that they frequent the head-waters of certain rivers for the purpose of procreation only. They then descend to the sea, where they are pursued by the people of all nations.

In the case of all marine animals, however, it is the object of regulations to prevent as much as possible their disturbance when on the breeding-grounds.

If this wholesome principle were applied to the case of seals, the plan suggested by many of those concerned in the preservation of seal life would more effectually insure the object of the Regulations suggested by the reference in this Case.

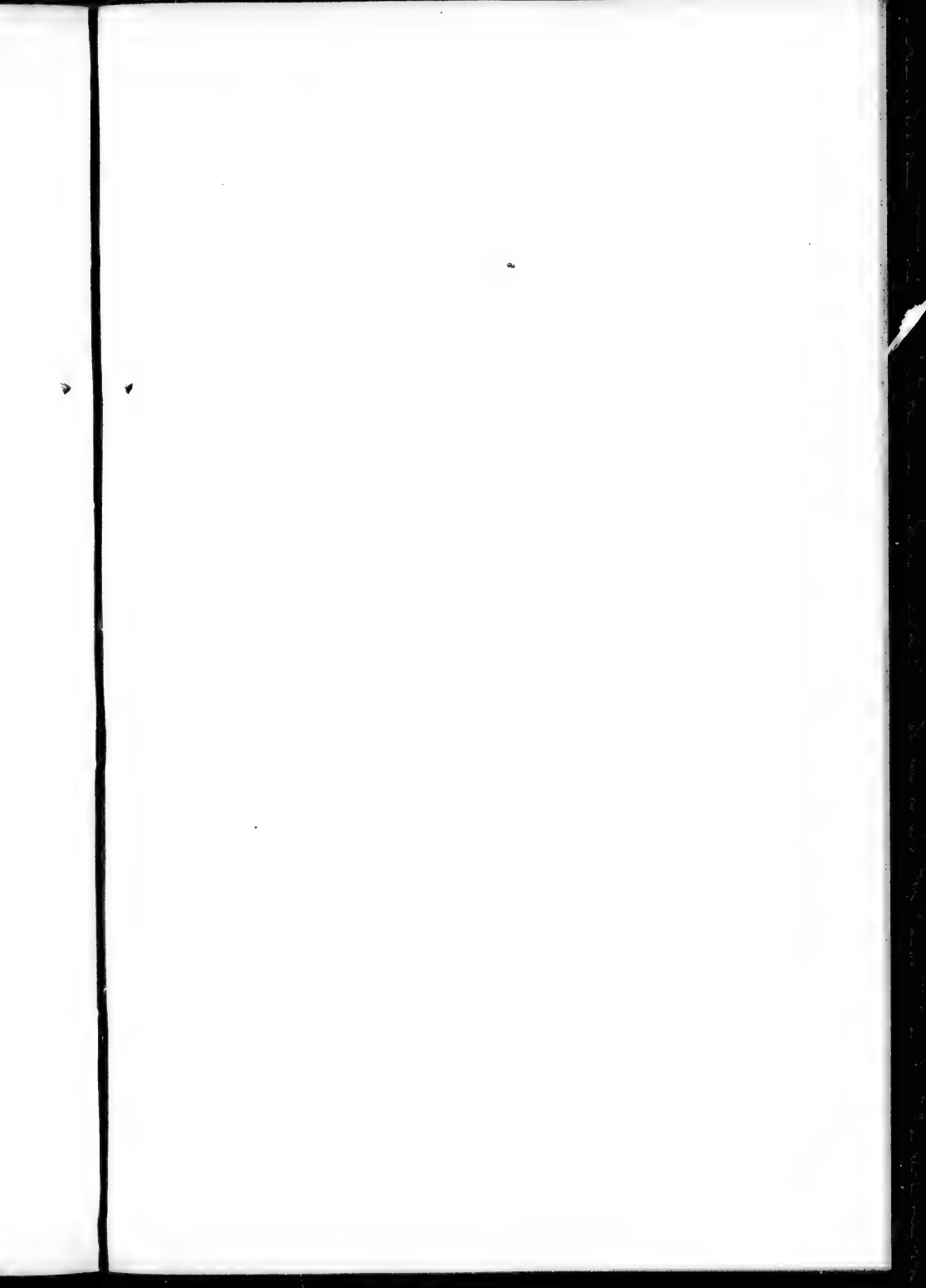
In the evidence taken before the Committee of Congress on the Pacific Coast appointed to inquire into the relations of the United States with Canada, Captain Brown suggested that, in dealing with the preservation of seal life, the following proposition should be considered:—

"Let the Government place proper people on those islands and establish open and close months; then say that no sealers should go within 3 leagues of these islands, for the females that nurse their young never go further away from the islands than that. There is an abundance of fish there for them to eat. The females go back to the islands two or three times every day to nurse their young. But let no fishermen go in there, and let there be close

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Canadian Print,
British Blue Book,
Correspondence,
Behring Sea, p. 415.



months, and let them have a fair and equal chance, and then I don't think they will ever exterminate those seals, because they reproduce themselves every year properly protected. ('Relations with Canada,' p. 346.)

"James C. Swan, Esq., of Port Townsend, is described before the Committee as a man who has given much attention to the fisheries of Behring Sea, both for his own information and for that of the United States' Fish Commission. ('Relations with Canada,' p. 314 of evidence.)

Canadian Print,
British Blue Book,
Correspondence,
Behring Sea, p. 648.

"He produced a Report of the Board of Trade of Port Townsend, Washington Territory, in which this Chamber of Commerce denounced the closing of Behring Sea as a 'species of class legislation for the benefit of the wealthy few.' ('Relations with Canada,' p. 65.)

"Mr. Swan advocated free fishing in the open sea, and explained at length that a valuable Report of his, wherein he expressed views opposed to those of Mr. Elliott, was suppressed, and he adds:—

"The arguments and assertions of the Alaska Commercial Company that the fur-seals all go the Pribylov Islands, and would be exterminated if that Company did not have the care and protection of them, would easily be disposed of if both sides of the argument could be heard and the real facts made known.' ('Relations with Canada,' p. 268.)

"Further on he says:—

"Congress and the country have been systematically kept in darkness regarding the fur-seal fisheries in Behring Sea, for those who have had the information to impart have had an interest directly opposed to imparting it.' ('Relations with Canada,' p. 269.)

"Mr. Swan denies there is any danger of extermination of seals, and produces sworn declarations touching the existence of seals at places which witness now claims the seals have abandoned.

"Finally, Mr. Swan is asked by Senator Pugh:

"You do not think it is of any importance to prevent the destruction of seals?

"He answers:

"I do, on the islands, but not on the outside, because the proportion of seals that are destroyed is a very small fraction of what the whole number is. There are millions of seals in the Pacific Ocean. You have no conception of the vast myriads of them.' ('Relations with Canada,' p. 289.)

"Mr. Swan did not believe that for every seal taken several were killed. He refers to the shyness and intelligence of the seal, and to the fact that they are never taken when in motion.

"He further said:

"Behring Sea must be declared free and open to all our citizens, except the adjacent waters to the Pribyloff Islands, which should not exceed in limit the distance from the shores of those islands of 1 marine league, inside of which limit the seals should be preserved during the

Ibid, p. 646.

months of breeding, as belonging to the rookeries owned by the United States, but outside of that limit the waters should be free to all of our citizens. ('Relations with Canada,' p. 265.)

Canadian Prince,
British Blue Book
Correspondence,
Behring Sea, p. 647.

"It is constantly asserted in Washington that the indiscriminate slaughter of seals will exterminate them, and cases are cited of the Islands of Massafuera, Lobos, and others on the Pacific coast, where the slaughter by crews of vessels from New London, Connecticut, and other New England ports, has entirely exterminated the fur-seals at those islands and at Cape Horn. I assume that fur-seals can no more be exterminated than herring or codfish. They may be driven off from a rookery, but they are not exterminated; and in proof of my assertion I respectfully ask permission to file the sworn statements of Richard Dupuis, relative to the fur-seals of Cape Horn, and of Edward Thomas Biggs, relative to the fur-seals of the Falkland Islands, which I have respectively marked. (See Exhibits Nos. 2 and 3.)

"The statements show that the fur-seals have not been exterminated at those places, but are taken in considerable numbers every season, and although at one time were almost driven entirely away, are now returning to their former haunts.' ('Relations with Canada,' p. 269.)"

Report of British
Commissioners, p. 27.

This is one of the recommendations of the British Commissioners.

There are many who have expressed opinions in favour of direct control of the Seal Islands by the United States' Government, thereby protecting the seals when breeding, and encouraging their resort thither.

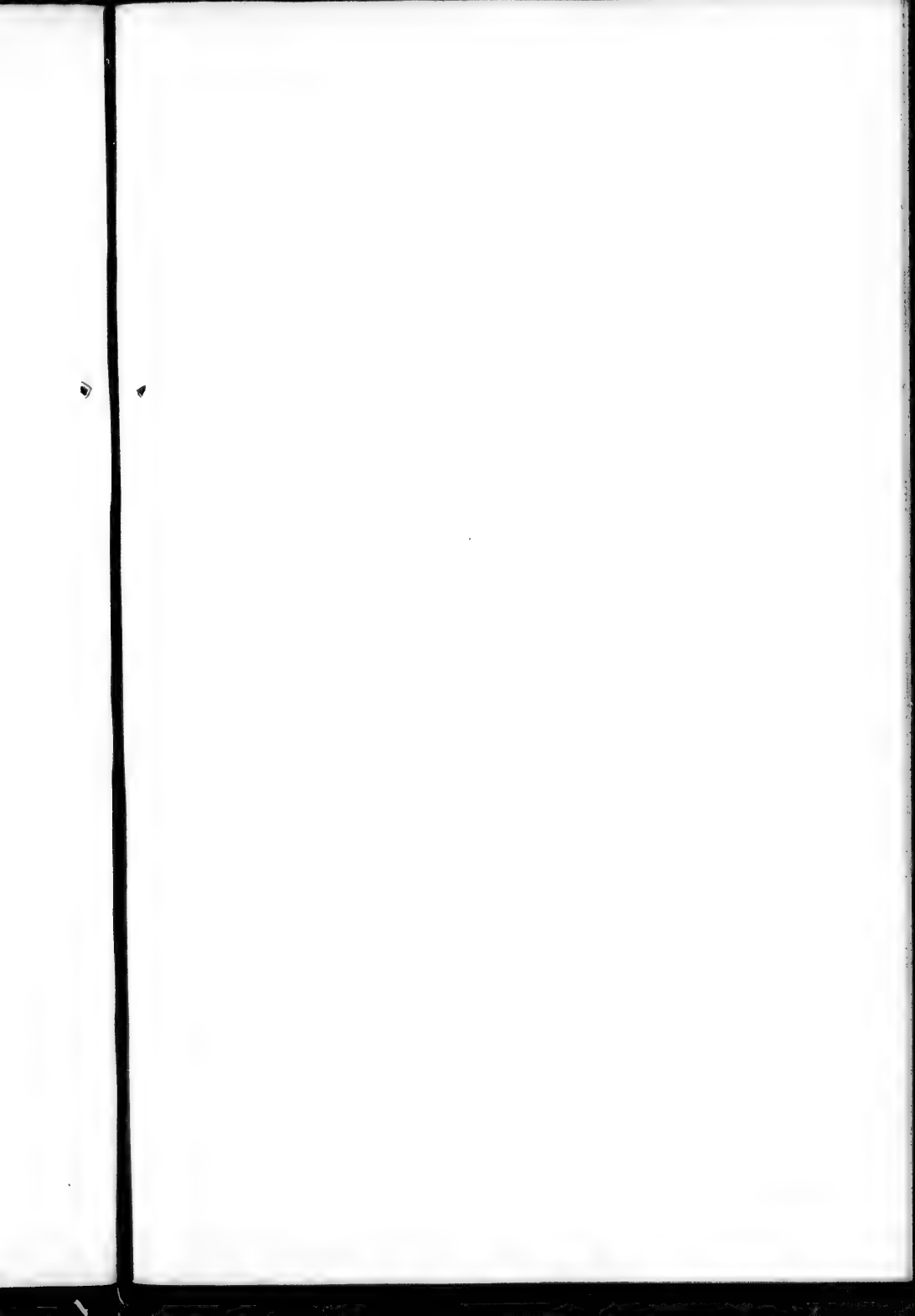
During a discussion in Congress (*vide* "Congressional Globe," 30th June, 1870, Part 6, 2nd Session, 41st Congress, p. 5032), Mr. Howe spoke as follows touching the system of leasing the islands to a Sealing Company:—

"I said it seemed to be framed on the idea that the Government owned the seals. The Senator from Oregon, who must be familiar with the Bill if anybody is, says it is framed on no such idea; the Government does not own the seals; that idea is not incorporated in it. I ask, then, why the Government undertakes to lease the right to catch them—to lease the right to slaughter them? It does not lease the right to catch fish anywhere."

In a pamphlet designed to explain to eastern Senators and Congressmen the full value of the fur-seal fisheries, in order to enable them to judge of the policy involved in leasing the Seal Islands, it is said:—

"Another way, which we think would be much better for the best interest of the people of the Pacific coast, would be as follows:

British Case,
Appendix, vol. III,
pp. 266, 266.



"Let the Government take charge of this Reservation, and, instead of killing 100,000, take 50,000 seals; and in doing this let the selection be more thorough, so that the 50,000 skins shall be strictly choice skins, that would average the highest possible price. Then abandon the present policy of claiming the Behring Sea as an inland sea, which cannot be made to stand in the end. Restrict the killing of seal within the 3-mile or 6-mile limit, whatever is decided to be the limit of what a nation can hold authority over the high seas, and in this way it would promote the industry of private sealing to a much larger extent than it now is."

Mr. Boutwell, the Secretary of the Treasury, reported in 1870 (41st Congress, 2nd Session, Ex. Doc. No. 109):—

"Ordinarily, I agree in the opinion that a Government, especially one like that of the United States, is not adapted to the management of business; but this clearly is a business which cannot be left open to individual competition, and if it is to be a monopoly, whether profitable or otherwise, the interest of the Government is so large, and the expenses incident to the protection of these islands so great, that it cannot afford to substitute to any extent the monopoly of an individual or of a Company for its own lawful supervision."

British Case,
Appendix, vol. iii.
p. 449.

The following is extracted from the Report of the Governor of Alaska for the year 1888 to the Secretary of the Interior at Washington:—

"The views I entertain concerning what I believe to be the bad policy of leasing the islands do not blind me to the fact that here is a most valuable interest which it is the duty of the Government to protect by every legal means in its power; it matters not whether the present system be continued, or whether some other and less objectionable plan of dealing with it be adopted."

Report of Governor of
Alaska, 1888, p. 219.

In a letter to the "Portland Oregonian" by J. J. Winant, 20th August, 1886, that gentleman wrote:—

"... The purchase of Alaska from Russia was all right. It was a good investment, and reflects credit on Secretary Seward and the Administration that consummated the purchase. But the disposition of it afterwards was all wrong, and is a gross injustice to the American people, and is a piece of secret history that may never be written."

Canadian Print,
British Blue Book,
p. 24.

"It would be a hopeless undertaking for an obscure citizen of small means to seek redress, either through our Courts or through Congress, for wrongs inflicted upon him by this soulless and overbearing Company. The immense profits accruing to the Company from their franchise

Ibid., p. 25.

afford them the means to head off legal redress and to control Congressmen by subsidizing them.

"Once in a while, the Government sends out a Commissioner to examine into the Company's affairs, to see if they kill the correct number of seals, &c. When he arrives in San Francisco, a fine steamer is ready to receive him and convey him to the islands, and, being so nicely treated and entertained, he could hardly fail to find everything all right.

"Then he returns to Washington, and the Company requires the service of an agent to watch Congress, and see that no unfavourable legislation is enacted. So he gets paid by the Government to watch the Company, and paid by the Company to watch the Government, and consequently his trip is a very pleasant and profitable one.

"By publishing this, and getting public attention directed to this subject, you may accomplish great good, and contribute largely to prevent a renewal of this infamous lease, and thus break up an overbearing and oppressive monopoly."

General Howard (Report, 30th June, 1875, on a tour in Alaska), in referring to complaints against the Alaska Commercial Company, said:—

Senate Ex. Doc.
No. 12, 44th Cong.,
1st Sess.

"Of course I have no means of judging of the truth or falsity of most of the statements herein contained, but do believe it to be a mistake, and a dangerous precedent on the part of our Government, to give into the hands of any Company, however benevolent in its intentions, so vast a monopoly" (p. 11).

Mr. H. C. De Ahna, formerly Collector of Customs at Sitka, says (4th November, 1877) of the Alaska Commercial as a Corporation—

Senate Ex. Doc.
No. 192, 46th Cong.,
2nd Sess., vol. v.

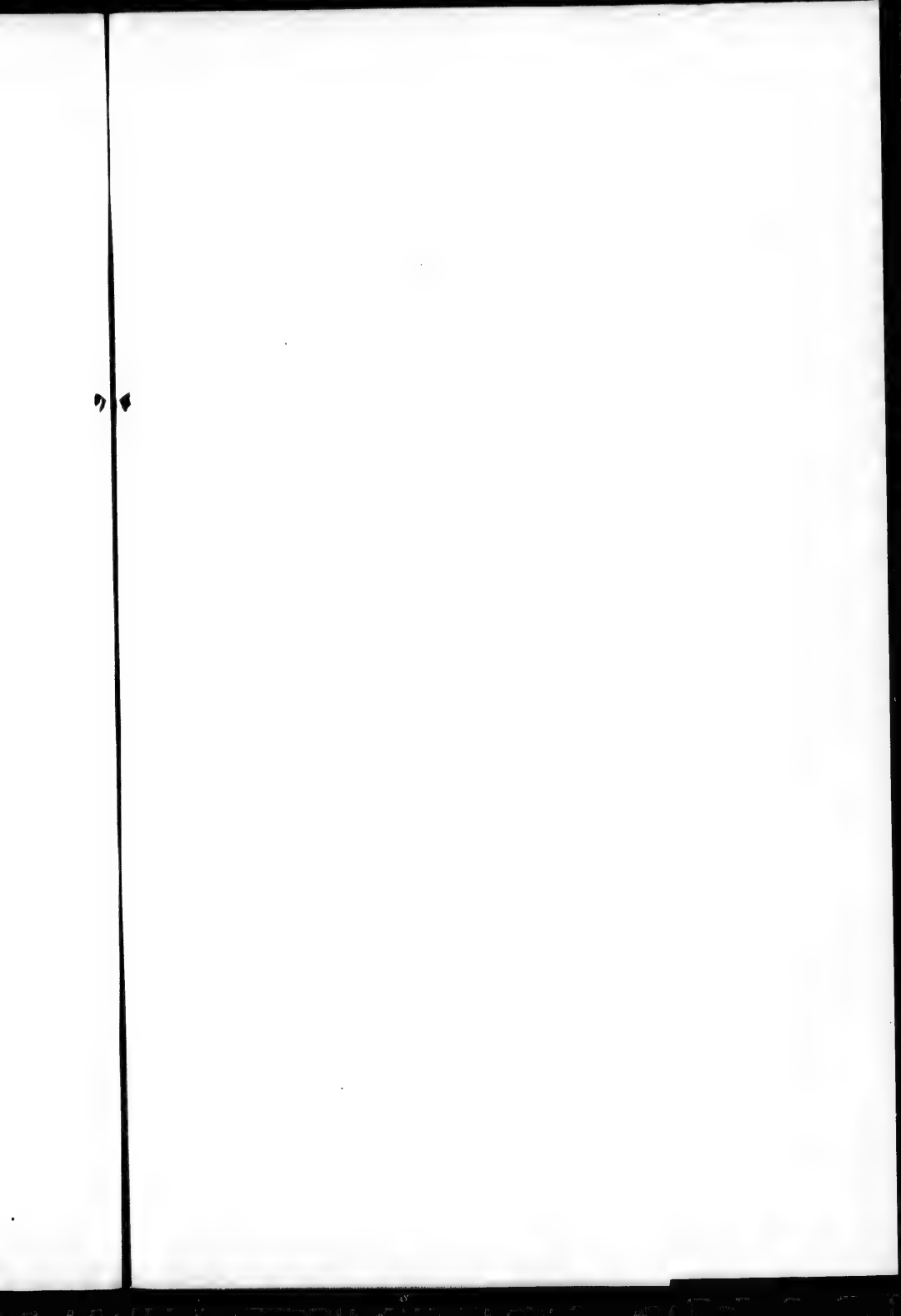
"is a deadly incubus on that country, which is a happy hunting-ground for that powerful league of sharpers so exceedingly well represented in Washington city. . . ."

H. R. Mis. Doc.
No. 11, 41st Cong.,
2nd Sess., vol. i.

Frank N. Wicker, Special Treasury Agent, 4th November, 1869, recommended the passage of a Bill authorizing the Government to assume sole control of the seal fisheries of St. George and St. Paul Islands; remove all traders except the natives, who should be employed to kill seals at fair remuneration; appoint Inspectors at liberal salaries to carry out restrictions imposed, &c.

Report of Alfred
Lavender, Assistant
Treasury Agent,
July 26, 1869.

"The Government should take absolute control of these islands, and permit no seal to be killed more than are needed by the natives for food for the next six or seven years. . . ."



International Regulations are proposed, in which it is said the participation of other Governments may be properly invited, to prevent the extermination of the seal herd, and to *preserve it for the United States* and for the benefit of the world.

United States' Case,
p. 299.

To do this, the United States contend, pelagic sealing must be prohibited in all waters where-soever the seal resorts, and it is added that no other regulation will prevent its extermination.

Ibid., p. 301.

The Tribunal is asked to prescribe "Regulations" or "an Agreement," "equitable," "just," "humane," and "enlightened."

A decree is demanded that it is the duty of Great Britain to concur with the United States in the adoption and enforcement against the citizens of either nations of such Regulations as will prevent the capture anywhere upon the high seas "of any seals belonging to the said herd."

Ibid., p. 308.

Neither the United States' Case nor the Reports of the Commissioners indicate what "all the waters" are to which the "seal herd" resorts.

The Case fails to point out any method whereby a particular "herd" of seals may be known, so as to enforce a Regulation to prevent its capture anywhere upon the high seas.

The Regulation proposed is clearly impracticable.

The Tribunal is not empowered to regulate the pursuit of fur-seals which resort to the Kurile Islands, nor of many others found in the waters of the North Pacific Ocean.

The proposed Regulation is unreasonable,

The proposition of the United States in effect and in fact amounts to this:—

While Russians, Japanese, South Americans, and people of all other nations may freely continue to enjoy the right of pursuing the seal, while also its marine enemies in the North Pacific may continue to destroy half-a-million a-year, and while Russians, Japanese, and citizens of the United States are killing seals on their respective rookeries, the subjects of Great Britain, inhabitants of a long coast-line on the Pacific, are to be absolutely prohibited from all enjoyment in this industry.

When the Convention was signed the chief difficulty touching Fur-seal Regulations between the two Governments was confined to the eastern half of Behring Sea.

The most extreme proposal of the United States under this head was up to that period for the exclusion of sealing-vessels from Behring Sea.

British Case,
Appendix, vol. III,
p. 172.

In February 1888 Mr. Bayard, Secretary of State, proposed an International Agreement for Great Britain, the United States, and other interested Powers, by which pelagic sealing in Behring Sea only would be prohibited from the 15th April to the 1st November in every year. This practically confined all killing of seals in Behring Sea to the breeding-islands, to be enjoyed by the United States and by Russia for their own exclusive benefit. No seals are found in that sea in the other months.

Ibid., pp. 398 415.

On the 22nd January and the 1st March, 1890, Mr. Blaine contended that killing seals in the open sea tended certainly and rapidly to the extermination of the species.

Ibid., p. 405.

In May 1890 Sir Julian Pauncefote reported that Mr. Blaine insisted on the exclusion of sealing-vessels from Behring Sea during the summer months.

Ibid., Part II, p. 54

On the 17th December, 1890, Mr. Blaine stated that the United States would be satisfied with an exclusion of sealers from within 20 marine leagues from the islands from the 15th May to the 15th October in each year, and he adds:—

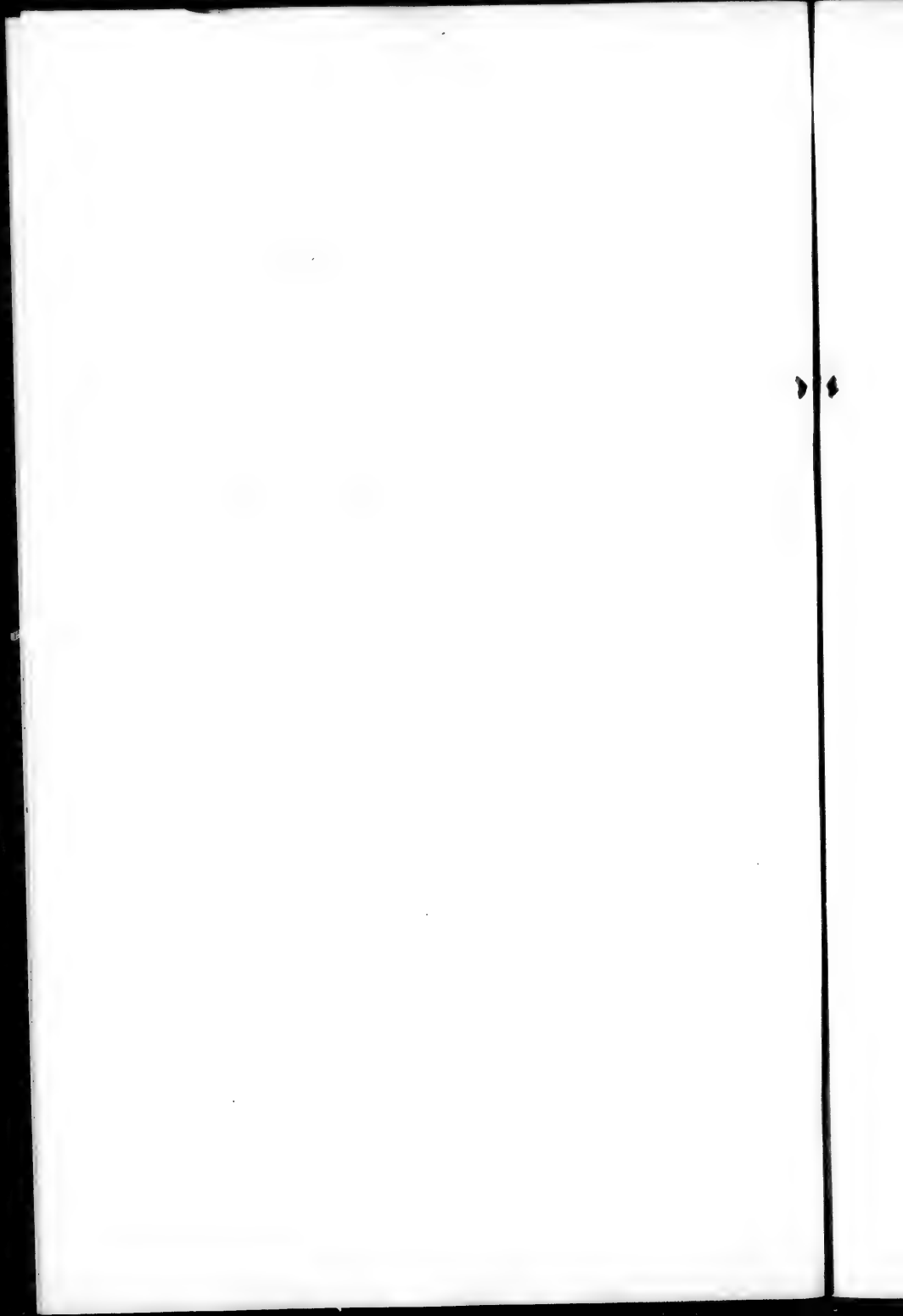
"This will prove an effective mode of preserving the seal fisheries."

The conclusions of the United States' Commissioners and those of the British Commissioners appointed to report upon seal life widely differ.

While it is true that the Report of the United States' Commissioners ascribes a serious decrease in seal life almost entirely to pelagic sealing, the Commissioners pass abruptly over facts of an alarming character, which are referred to by the British Commissioners and supported by recent official Reports in the United States.⁷

Further reasons for dissatisfaction with the Report of the United States' Commissioners have been given.

The action taken by Dr. Merriam, in his effort to obtain support for the Case of the United States, shows that in him the Tribunal has not that impartial assistant it was expected when the Commissioners were appointed.



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The conclusions of the United States' Commissioners are contradicted by Professor H. W. Elliott, who was appointed a Special Agent of the Treasury to examine into and report upon the fur-seal fishery in 1890, under the provisions of a special Act of Congress approved on the 5th April, 1890.

Mr. Elliott denounces, moreover, in his Report, the practices of the lessees and the United States' management of the islands in unmeasured terms.

The British Commissioners trace the decrease of seal life at the breeding-islands chiefly to the ruinous practices of the lessees.

With these Reports, followed, as they are, by affidavits and statements equally contradictory, it is to be regretted that the United States' Case has not suggested Regulations which would indicate a greater desire for the protection of seal life, and less the wish to secure a great and valuable monopoly of the fur-seal interest.

To apply any Regulations to pelagic sealing under the circumstances disclosed in the Report of the British Commissioners in this Counter-Case would be as unreasonable as to impose restrictions over a coastal salmon fishery, while the salmon on the spawning-beds and in the river generally were being ruthlessly destroyed.

In this connection the United States' Case refers to Regulations elsewhere.

The principle of them all is uniformity and equal conditions for those interested.

The Ordinance at the Falkland Islands prescribes an uniform close season for the Seal Islands and the sea.

So in the case of New Zealand.

The Statutes of Canada are uniform and general.

The legislation of Newfoundland prescribes a close time applicable to all, and Regulations which are general.

In the Caspian Sea "driving" is not allowed where the seals haul up for breeding, and the Regulations are general.

In Uruguay the close season is general, and no distinction is made between land and pelagic sealing.

So also in Japan.

The Jan Mayen Regulations cover the open

sea, where alone the seals are got. The same Regulations apply to all interested in the sealing.

It is said in the records of the United States' Senate:—

Senate, 50th Cong.,
1st Sess., Mis. Doc.
No. 109, p. 85
(Minority Report).

"In all the wide range of our Treaty engagements with the Treaty Powers of the world there is scarcely one that does not contain some mutual advantage or reciprocal concession, and they cover every subject that has been suggested in the experience of mankind as being fit or convenient to be settled by international agreement rather than to be left under the control or security that might be afforded by the laws enacted by the respective countries, which they could alter or repeal at pleasure.

"Nothing could more certainly lessen the food supply of the people, which, after all, is the basis of all human progress, than to promote strife amongst fishermen visiting the same waters. A policy that leads to such a result is an injustice to the human family."

Ibid.

page 88

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*The United States' System of Monopoly, the Lessees,
and the Natives.*

United States'
Case, p. 124.

Recognizing that no regulations touching pelagic sealing will be prescribed if the management of the United States at the islands has not been satisfactory, the United States' Case refers to the system prevailing at the islands in the fur-seal business, and claims it was adopted in the interest of the Government, the native inhabitants, and for the protection of the seal fisheries.

It is added that in 1876 and 1888 it was found that the terms of the lease to the Alaska Commercial Company were favourable to the Government, and to the physical and moral condition of the natives as well.

These statements are made apparently to establish that by a monopoly such as hitherto existed the interests of the natives of Alaska and the protection of the seals will be at once secured.

The interests of the Aleuts and of the United States' Government, it is submitted, are irrelevant to any of the issues in this Case.

There is, however, abundant evidence to justify a severe condemnation of the policy which is thus submitted to the Tribunal for approval.

The immediate value to the United States of a monopoly need not be disputed.

So valuable were the franchises of the monopoly on the Seal Islands that in 1890, notwithstanding the Reports of United States' officials and of the Secretary of State, that an alarming decrease in seal life had begun on the islands in 1885, and was continuing, the tenders for the privilege of taking fur-seals upon these islands for the term of twenty years were larger in amount and more favourable to the United States than those of 1870.

See Appendix for
terms of offers in
1870 and 1890.

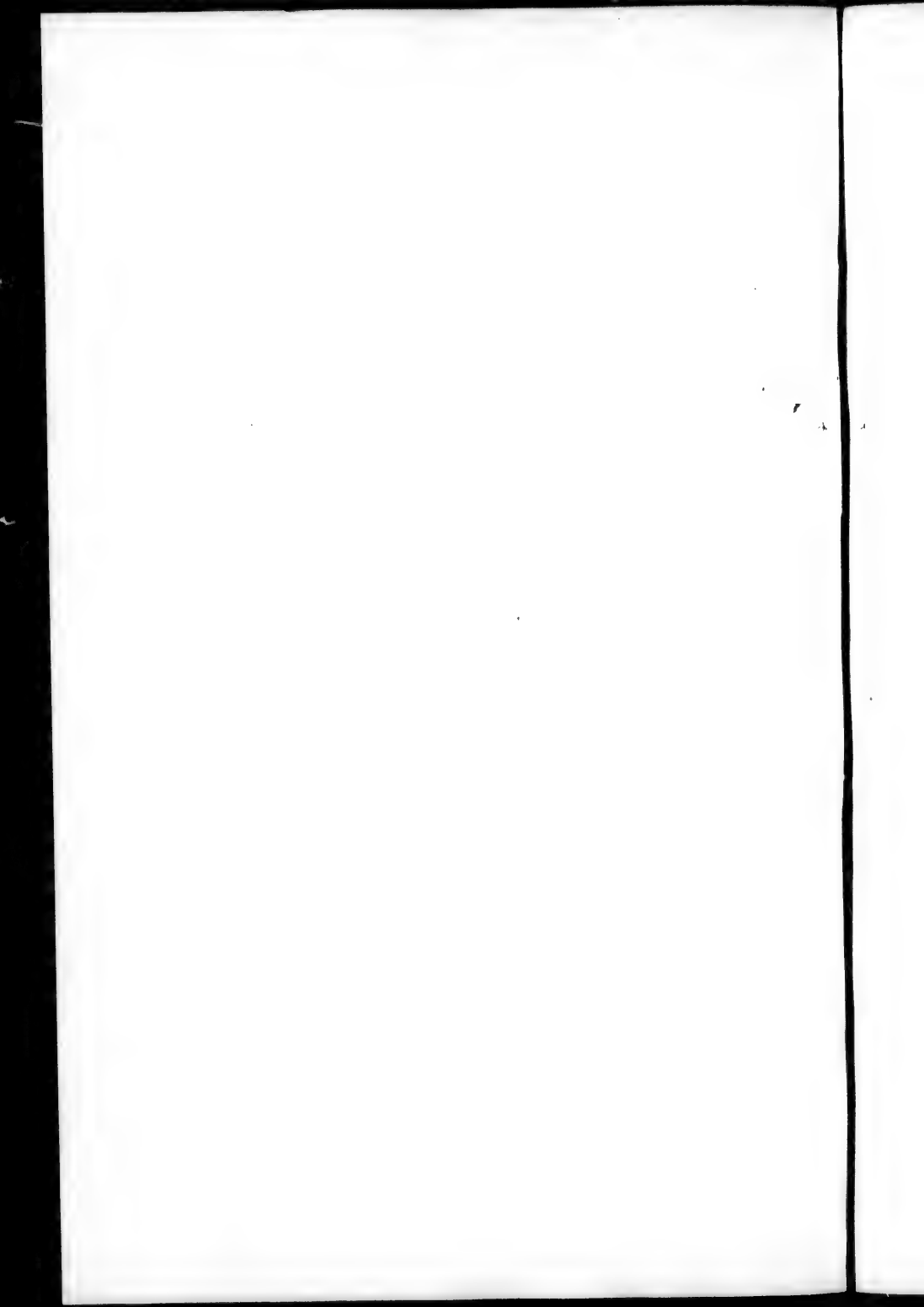
The value of the lease and its franchise consists in the sole control of the islands on which fur-seals are found.

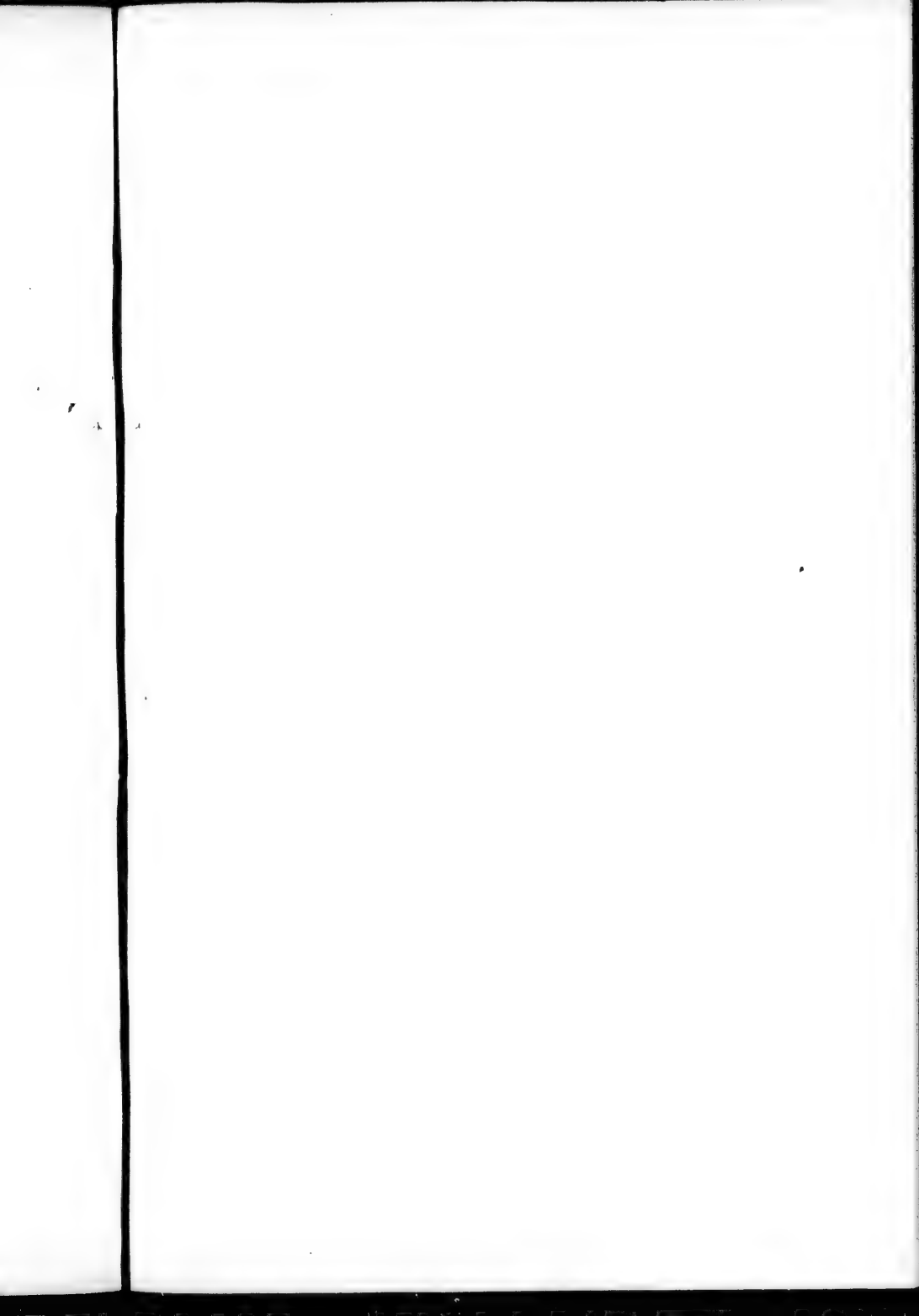
Report of Special
Agent, J. S. Moore,
1873, Ex. Doc. 83,
p. 197, 44th Cong.,
1st Sess.

Professor Elliott, in his work on Alaska, said:—

Elliott's "Alaska,"
1894, pp. 94, 95.

"When the Government took possession of these interests in 1868-69, the gross value of a seal-skin then in the





best market (London) was less than the present tax and royalty paid upon it by the lessees !"

In 1874, when Mr. Elliott wrote, the price of the raw material had doubled.

The tenders in 1890, referred to in this chapter, show how enormous was the increase then.

Mr. Moore gives another reason for the advocacy by the United States of a system of monopoly, which, it is submitted, is not concerned with the welfare of the natives or the preservation of seal life. He reported in 1875:—

"It seems that the 100,000 fur-seals from our own islands, together with the 30,000 obtained by them from the Asiatic islands, besides the scattering fur-seals killed in the south seas, are all the market of the world can conveniently take. In fact, it is pretty evident that the very restriction of the numbers killed is about the most valuable part of the franchise of the Alaska Commercial Company."

Report of Special Agent, J. S. Moore, 1875, 44th Cong., 1st Sess., H. Ex. Doc. 83, p. 196.

See also 44th Cong., 1st Sess., H. R., No. 623, p. 28, and p. 65 as to value of monopoly.

In some years, as will be seen, it paid the Company to take more than the terms of the lease permitted.

That the sole control and enjoyment of fur-seal hunting would be to the United States and to the lessees of the islands a source of enormous profit is not denied. The sole control of the cod fishery on the banks of Newfoundland would be to France, to Great Britain, or to the United States equally beneficial.

The exclusive right of fishing for mackerel in Atlantic waters would in like manner be beneficial to Canada and to the continuance of that particular fishery.

It is not, however, believed that any of the nations interested would consent to a surrender of its interest, even to insure the permanency of those fisheries.

The policy, however, of the United States, in creating a monopoly in the Seal Islands, has been a subject of angry debate in Congress from time to time, and has evoked great hostility on the Pacific coast.

Mr. Boutwell, when Secretary of State for the United States, reported on this subject in 1870, urging grave objections to such a policy. It involved, he pointed out, a monopoly—an absence of inducement on the part of the lessees to secure either the welfare of the natives or the permanency of the fisheries. Mr. Boutwell strongly advocated Government control.

41st Cong., 2nd Sess., Ex. Doc. 109. See Appendix.

"Congressional Globe," Part II, 40th Cong., 3rd Sess., p. 1497, February 23, 1869. See Appendix.

In Congress the policy was characterized as creating a "bold-faced monopoly," and as an "outrageous" proposition. The conduct of the lessees upon the islands has been such as to qualify Mr. Boutwell's fears.

United States' Case, p. 124.

To the terms of the lease and the misconduct of the lessees is due a great deal of the condition of affairs described in the United States' Case as at present existing. Turning to United States official records under these heads, it is found that the statements in the text of the United States' Case are not borne out.

Treasury Agent Frank N. Wicker, on the 4th November, 1869, wrote of the Seal Islands:—

H. Mis. Doc. No. 11, 41st Cong., 2nd Sess.

"Although the present Law, which prohibits the killing (Act of Congress approved 27th July, 1868), is ostensibly in force, it is notoriously silent in regard to the disposition of such skins as may have been taken from animals in violation of the Law. From a personal inspection of the islands during the month of September, I am convinced that over 100,000 fur-seals have been killed this season, and the skins sold to traders. . . ."

"Congressional Record," vol. ii, Part III, 43rd Cong., 1st Sess., p. 2737, H. R., April 2, 1874. Appendix.

A prominent member of the United States' Senate charged in 1874, in his place in the Senate, that the Company took more seals than the terms of the lease permitted.

Concerning both the destruction of seals and the abuse of the natives, Mr. Moore at the outset, in the Report from which a quotation has already been made, advised the United States' Government as follows:—

Report of Special Agent, J. S. Moore, p. 198, Ex. Doc. 83, 44th Cong., 1st Sess.

"It would nevertheless be in my judgment advisable if a periodical examination of the fulfilment of the lease by the Company is made.

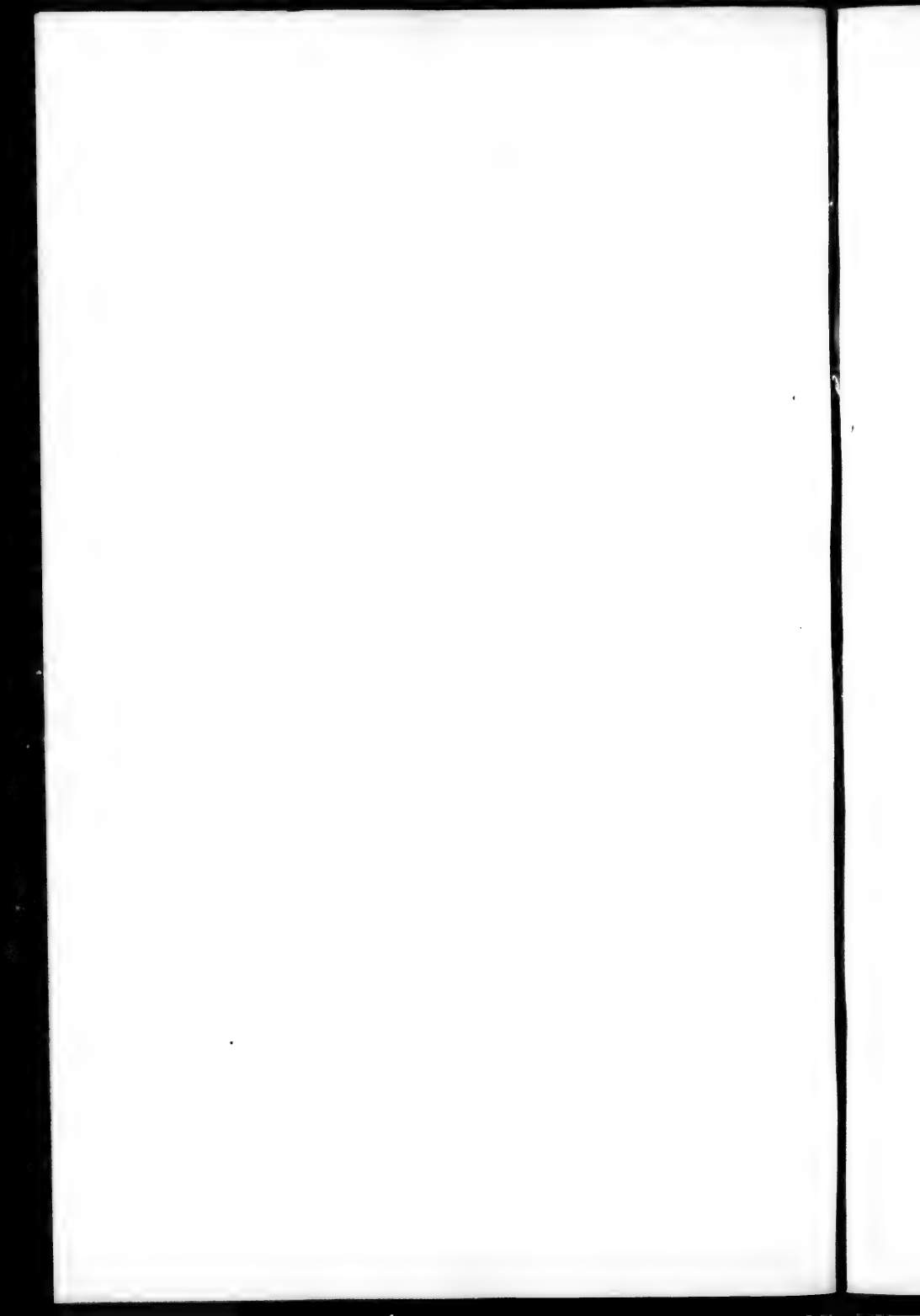
"A competent person, enjoying the confidence of the Department, should be sent to San Francisco once, at least, in every three years, whose duty should be to thoroughly examine the books, correspondence, account of sales, shipping documents, entries, and tax receipts of the Company, relating to the number of seals killed, skins shipped and sold, on which tax was collected. These documents should be carefully verified, and the result reported to the Secretary of the Treasury.

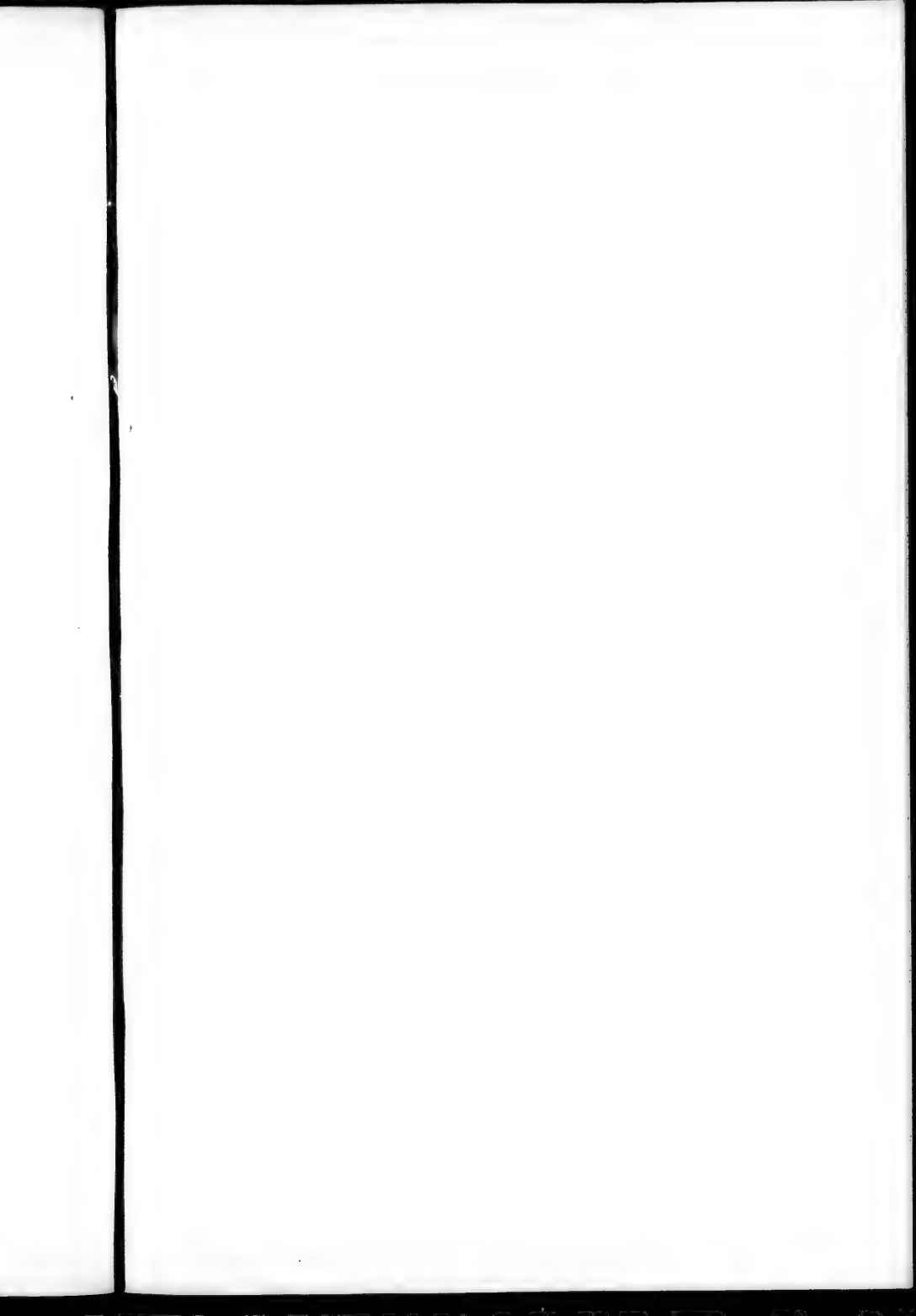
"The regulation, I have no doubt, will be found wholesome both to the Treasury and the lessees."

In another official Report the frauds on the part of the Company, possible and actual, are thus alluded to:—

Elliott's Report on Alaska, 1874, p. 236.

"This is, that it would be very desirable that the officers of the United States employed on the Pribyloff Islands





should be prohibited from receiving pay from, or rendering services for pay to, the Company, whom practically they are placed there to watch. That this has occurred in several instances I am aware, and probably in some cases without any improper intent on either side; but it is evident at once that it opens a wide door for scandal, if not for fraud."

The results of the maladministration of the Seal Islands on the part of the United States' Government and the practices of the lessees so injurious to seal life are discussed in another part of this Counter-Case.

The records of the United States disclose an equally unfortunate state of affairs affecting the natives and the interests of Alaska, which it is said were made subservient to the interests of the Fur Companies. Respecting the natives in 1874, Mr. Elliott reported :—

"The Russians left these people with their self-reliance enfeebled, but their intelligence and morals elevated to some extent above their original condition. We have done nothing to sustain them in this position, nor to cultivate their self-reliance."

Elliott's Report on
Alaska, 1874,
p. 234.

It is suggested in the United States' Case that the interests of the natives and of the Fur Companies are identical. Mr. Elliott, however, was of opinion that—

"the description of men who gain their livelihood as fur traders are, with rare exceptions, unfit to be trusted with absolute power over unresisting natives, notwithstanding the possible high character of the distant Heads of the Company who employ them."

Ibid.

The extent of the Company's monopoly covering the whole fur trade of the Aleutian natives is described by Mr. Elliott.

Ibid., p. 232.
See Appendix.

Mr. Elliott also reported as follows :—

"The manufacture of quass, which they derived from the Russians, although prohibited by the Regulations of the Russian Company, has become a universal practice, and, joined to the absence of any elevating influences, such as schools or the supervision of agents deriving their authority from the Government, is rapidly and surely degrading the character and increasing the mortality of the Aleuts."

Elliott's Report
on Alaska, 1874,
p. 238.

And he added :—

"There are no grounds for skating, nor is it my opinion, that the present Company has abused its position more than any other would do in the same case; this, however,

is not the question at issue, but whether it is consistent with the honour of the Government and with its duty toward a people who occupy the position of wards of the United States to leave them in a condition where the grossest tyranny is possible, and where gradual degradation and relapse into barbarism is certain."

General O. O.
Howard's Report
on Alaska,
44th Cong.,
1st Sess., Ex.
Doc. 83, p. 182.
Appendix.

A history of the creation and conduct of the Alaska Fur Company or first lessees of the islands from the United States was laid before Congress in 1875.

It accompanied an official Report of General Howard.

In this history corruption is charged in connection with the lease from its inception to the date of the complaint.

It sets out that Hutchinson, Kohl, and Co were the promoters of the lessees Company which secured the lease, and that it was principally through the assistance of the United States' revenue officers that this was accomplished.

It is said:—

"The most zealous revenue officials in the interest of Hutchinson, Kohl, and Co., were W. S. Dodge, Collector at Sitka; Samuel Falconer, Acting Collector at Sitka (afterwards in the employ of Hutchinson, Kohl, and Co.); Mr. H. H. McIntyre, Special Agent of the Treasury Department (now General Agent of Hutchinson, Kohl, and Co., or the Alaska Commercial Company); William Kapus, Collector of Sitka (afterwards general agent of Hutchinson, Kohl, and Co., or the Alaska Commercial Company); General Miller, Collector of San Francisco (now President of the Alaska Commercial Company), and several others."

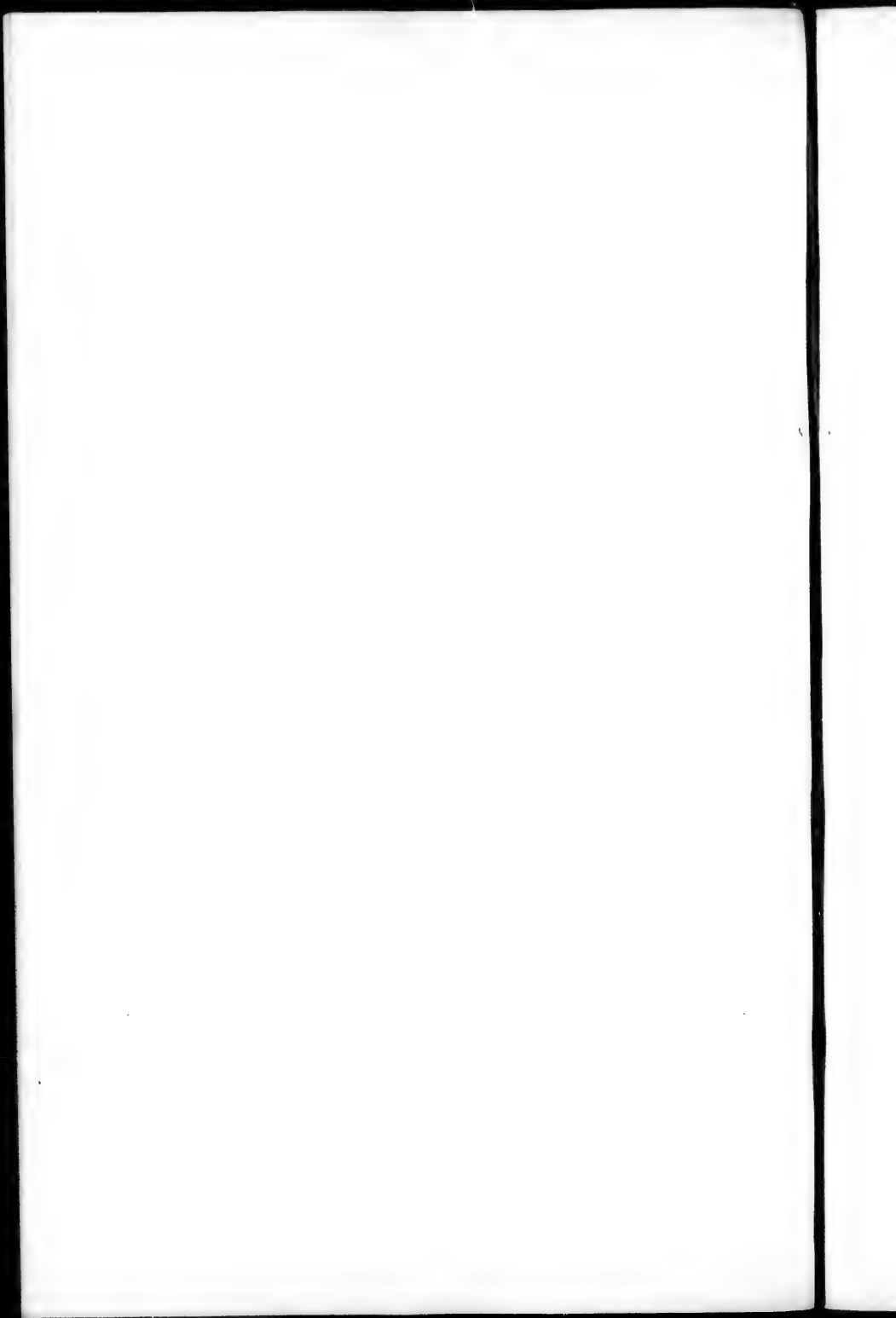
It is further remarked:—

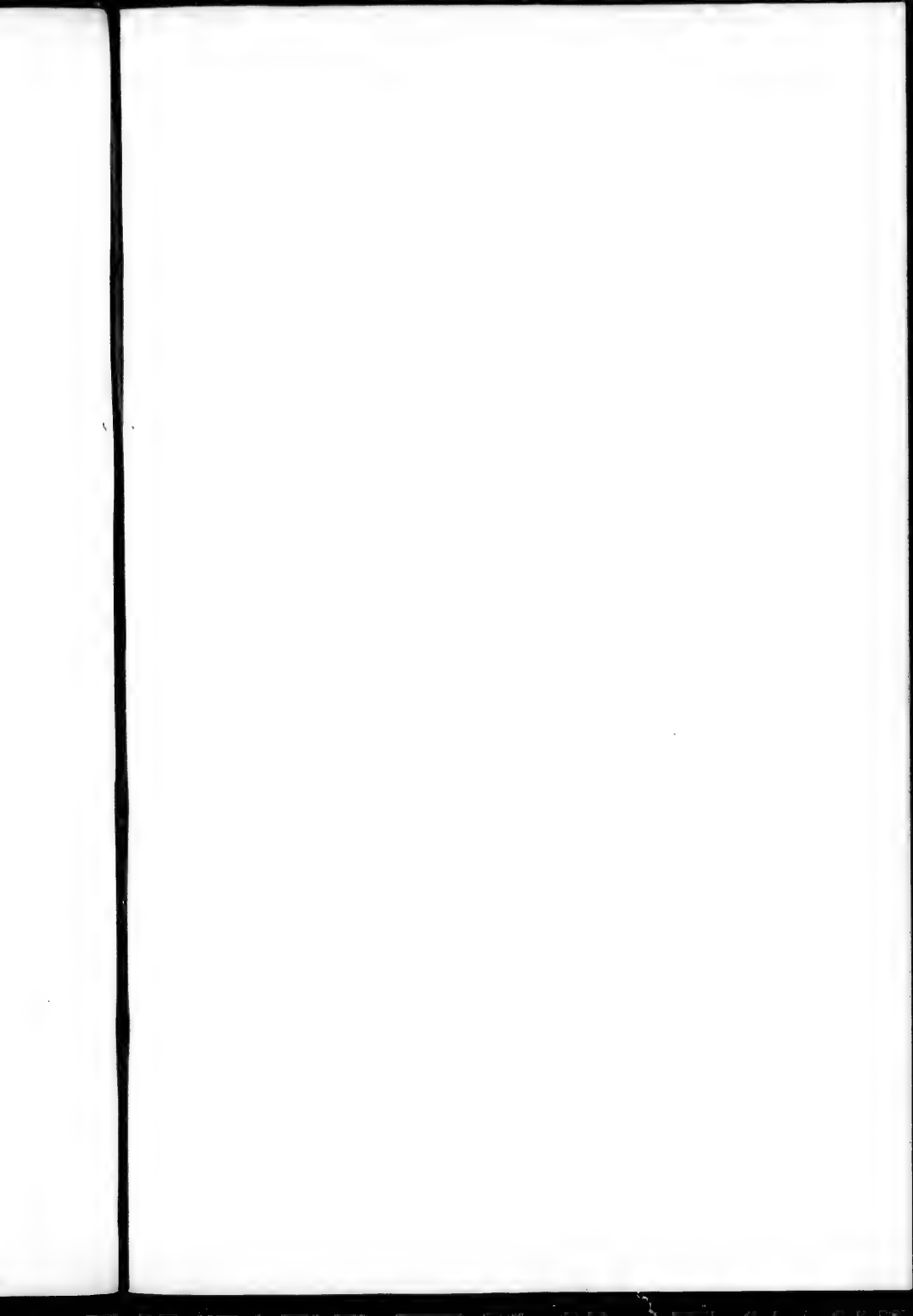
"... It was natural that, as soon as the territory was opened to the Americans, a number of Companies should immediately dispatch their ships to these mines of wealth; and in 1868 we find Taylor and Bendel, Williams and Havens, Parrot and Co., Captain Morgan, Hutchinson, Kohl, and Co., and others, having stations on these islands, and energetically engaged in taking skins."

It is also charged that—

"Hutchinson, Kohl, and Co. not only controlled the revenue officers in Alaska and the Collector of the Port of San Francisco (who is now the President of the Alaska Commercial Company), but that they had also gained a great influence at Washington."

The opinions of the public press are referred to.





Some of the quotations are as under :—

"Quotations taken from the Press and General Protests.

"In a long article headed 'Monopolizing Alaska' in the 'Bulletin,' 23rd January, 1869, we find—

"'Hutchinson, Kohl, and Co. having, however, secured for themselves, under a Republican Government, all the privileges enjoyed by a Company that was one of the worst representatives of Russian serfdom,' &c.

"The 'Daily Herald,' 29th January, 1869, in speaking of Senator Cole's Bill, says :—

"'The Bill is utterly indefensible.'

"The 'Daily Morning Call,' 18th February, 1869, brings an article, headed 'Gigantic Scheme to monopolize the Fur-trade of Alaska,' from which we extract the following :—

"'The Bill introduced by Mr. Cole, in the Senate of the United States, to prevent the extermination of fur-bearing animals in Alaska, embodies a scheme for the wholesale appropriation of all the resources of that region by a handful of capitalists, such as cannot but excite public indignation.'

"The 'Bulletin,' 25th February, says :—

"'Now, it is better that every fur-bearing seal in Alaska should be destroyed within the next twelve months than that such a monopoly as this, proposed in Congress, should ever be perpetuated in the new territory.'

"From the 'Chronicle,' 29th January, 1869, we quote :—

"'The merchants of San Francisco, whose interests would suffer severely by the passage of the "Monopoly Bill," have concluded to memorialize Congress against its passage, and we have been shown the document, which bears the signatures of many of our most prominent commercial firms.'

"The 'Alta California,' 30th January, 1869, after having commented upon Hutchinson, Kohl, and Co.'s doings in Alaska, continues :—

"'But a bolder step became necessary to protect them against the restless enterprise of American citizens, and, accordingly, they have applied to the Congress of the United States for such a Charter.'

"And again, in the same article, we find—

"'A proposition so monstrous has never been made to any Congress.'

" And again :—

" These wretched Aleuts are handed over, body and soul, to the tender mercies of a single grasping firm, to have and to hold in a worse than Russian serfdom, by the legitimate successors of the Imperial monopoly, which has just been routed out of its stronghold of power by the (nominal) dawning of Republicanism in the hitherto benighted regions of the north."

The merchants of San Francisco petitioned against the monopoly, and another Memorial to President Grant set out that the firm of Hutchinson, Kohl, and Co. had been permitted to control the trade of Alaska, the United States' revenue officers, and that the Deputy Collector at Sitka was their agent. They prayed that this monopoly of trade be stopped, and recommended direct Government control of the Seal Islands.

The Memorial was not heeded.

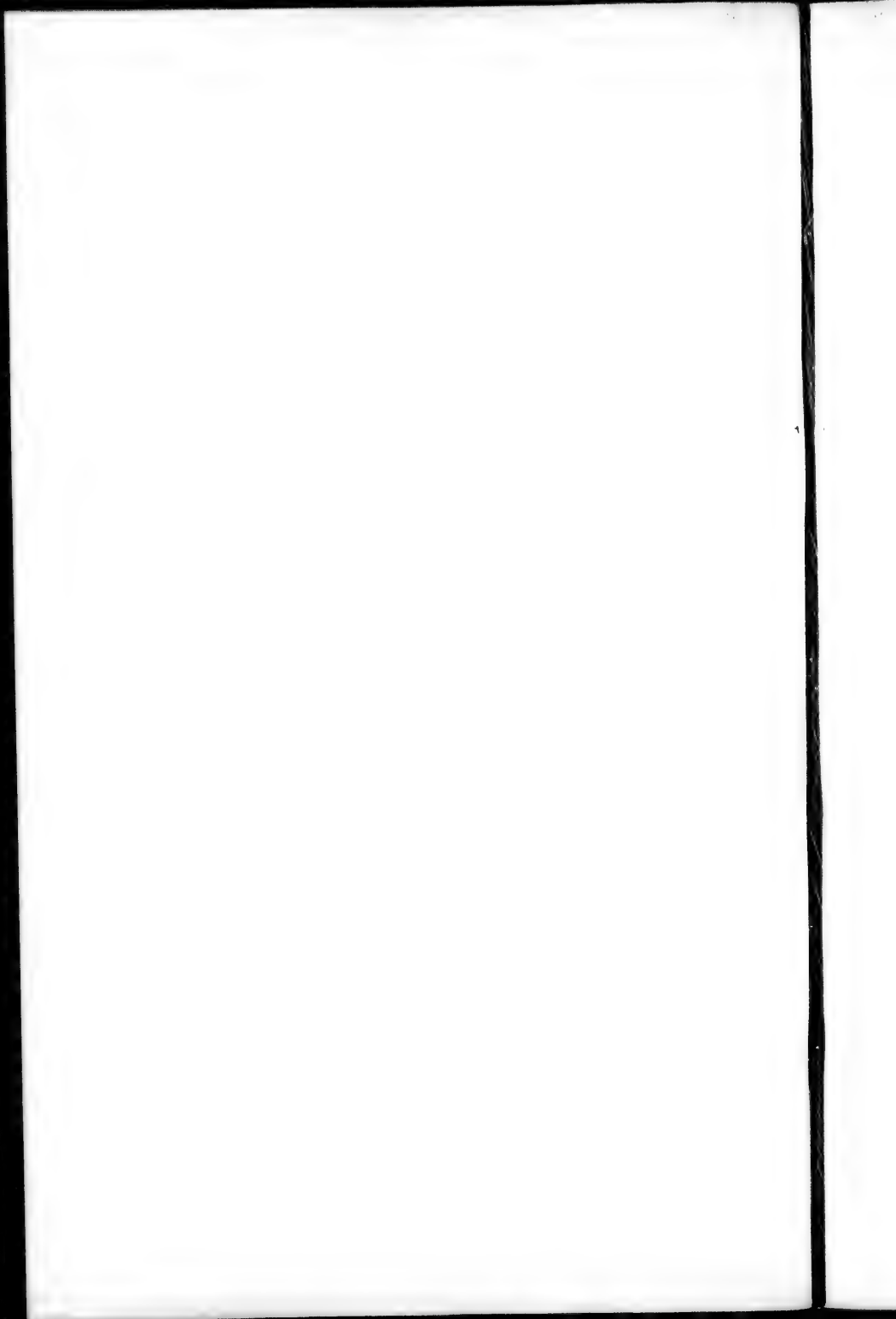
The statement continued :—

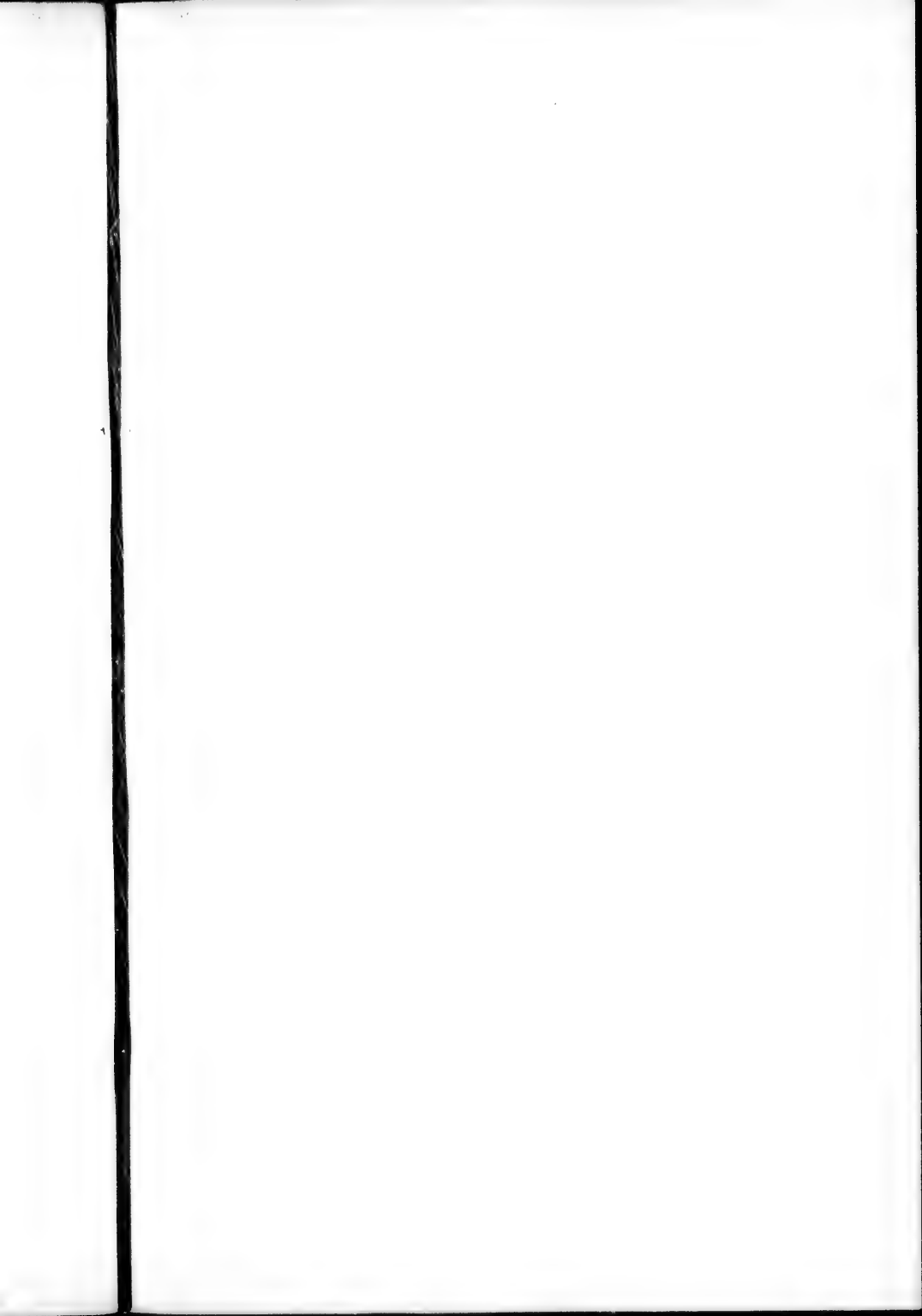
" It was coolly resolved that the principal wealth of Alaska should be handed over to Hutchinson, Kohl, and Co., and that the unfortunate Aleuts of St. Paul and St. George should be delivered into their hands; but as this could not be done without Congress having regularly acted upon it, a plan was devised which would enable Hutchinson, Kohl, and Co. to enjoy in the meantime all the privileges which they coveted."

" Thus, Hutchinson, Kohl, and Co.'s vessel was commissioned to do the Government's work, and General Miller, who soon after resigned his collectorship to become President of the Alaska Commercial Company, was intrusted with the selection of two trustworthy inspectors. Of course, these orders were only a form; the real intention was that Hutchinson, Kohl, and Co. should take immediate possession of St. Paul and St. George, and when Colonel Frank W. Wicker, then Collector of Alaska, and Mr. Vincent Colyer visited the islands during 1869 as Special Agents of the Government, they found that instead of 3,000 seals altogether, over 60,000 seals had been killed on St. Paul alone, and when Colonel Wicker made a report of the fact to the Government, he was immediately relieved. The skins were, of course, appropriated by Hutchinson, Kohl, and Co.

" The Lease.

" When the chances of Hutchinson, Kohl, and Co. of getting possession of the fur-seal islands became almost a certainty, not only Williams and Haven had joined them, but Collector Miller (who is a special friend and favourite of General Grant, and who had served the Company so well and his country so badly) resigned his Collectorship at the Port of San Francisco to become President of this enlarged concern, which now called itself 'The Alaska Commercial Company.' In the meantime, while the





lobbying at Washington went bravely on, it had been decided that said islands were to be leased, but in order to preserve at least an appearance of fairness, not to the Alaska Commercial Company, but to the highest bidder; but that this was nothing else but a blind to satisfy and appease the public subsequent events have sufficiently proven."

Tenders were invited.

The Treasury Memorandum on the last day for bids is set out in the statement,

Clause 2 of this Memorandum reads:—

"It being apparent from the language employed in the Act aforesaid that it was the intention of Congress to give a preference to the Alaska Commercial Company in the award of their contracts, I think it proper to state, before the bids are opened, that the contract will be awarded to the said Company if their proposals shall not be more than 10 per cent. below that of the highest bidder."

The statement adds:—

"The Secretary then proceeded to open the bids, of which there were fourteen.

"The lowest bid was that of the Alaska Commercial Company, amounting to 65,000 dollars rental a-year, and the highest bid that of Louis Goldstone, for a combination of various San Francisco firms amounting to a yearly rental of 227,500 dollars.

"The principal parties in the combination of firms for whom Goldstone had made the bids were the firm of Taylor and Bendel, one of the most respectable and prominent houses in San Francisco that had been engaged in the Alaska trade since its opening, and having the additional advantage over the Alaska Commercial Company of prior occupation. The inquiries immediately instituted by the Government in Washington, through the agency of the Custom-house Collector Phelps, of San Francisco, as to their standing and responsibility, were of a character in every way satisfactory.

"Notwithstanding this, and the great discrepancy in the bids, the Alaska Commercial Company entered various protests, which were referred by Mr. Boutwell to the Attorney-General, then Mr. A. T. Akerman, who heard arguments on both sides, and, under date of the 29th July, decided in favour of Goldstone and associates.

"After the delivery of Mr. Akerman's opinion, it was everywhere taken for granted the lease would be awarded to Goldstone. Nobody had any doubt of it. All obstacles had been removed, and all protests done away with.

"On the 30th July, Mr. Goldstone consequently called at the Treasury Office for the lease, but to his utter consternation and astonishment he was informed that the lease had been awarded to the Alaska Commercial Company on the terms of his own (Goldstone's) bid. The communication was made by Acting Secretary William A.

Richardson, whose face, in giving the information, was crimsoned with shame. Mr. Boutwell had secretly left for Massachusetts."

The statement contained also a Petition from the Aleuts.

It alleged that—

"when the fur-seal islands had been about a year in possession of the Alaska Commercial Company, there arrived in San Francisco a native of the Island of St. George, by the name of Peter Kupi, who brought to Agapius Housharenko, editor of the Alaska 'Herald,' a paper published in San Francisco, a Petition, written in the Russian language, which had been drawn up by the same Aleuts who once before appealed to the Chamber of Commerce, and which had been signed by all the leading men of the said islands."

The statement continued:—

"It was now evident beyond all doubt that although the General Government was fully acquainted with every detail of this disgraceful affair, no redress could be obtained at Washington; still, one more effort was made by the indignant citizens of San Francisco, and in February 1872 the Senate of the State of California was memorialized and implored to use its influence with the Government of the United States in behalf of this cause. We give here the Memorial:—

"Memorial to the Honourable the Senate and House of Representatives of the State of California,

"The Memorial of the Undersigned, citizens of the United States and merchants and traders of the City of San Francisco, most respectfully represents:"

And after referring to the monopoly of the Company, it goes on to charge:—

"And whereas the Executive branch of the General Government, through its officers and agent thereto prompted by like undue influences and corrupt practices and means, has been led to sustain the said monopoly in the illegal exercise of its unconstitutional privileges and powers, in that:

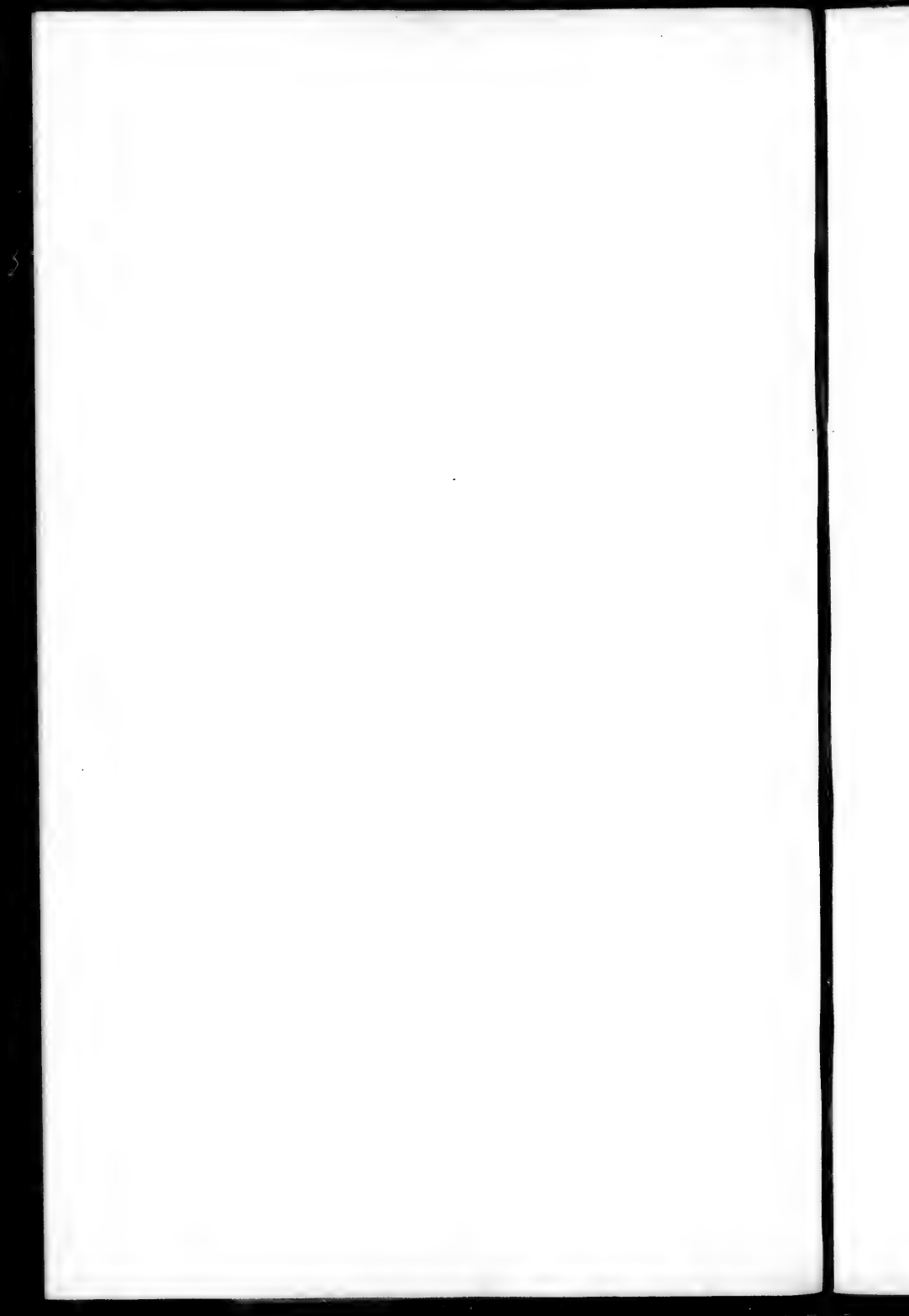
"It has surrendered itself, through its revenue officers in Alaska, to the control of this monopoly;

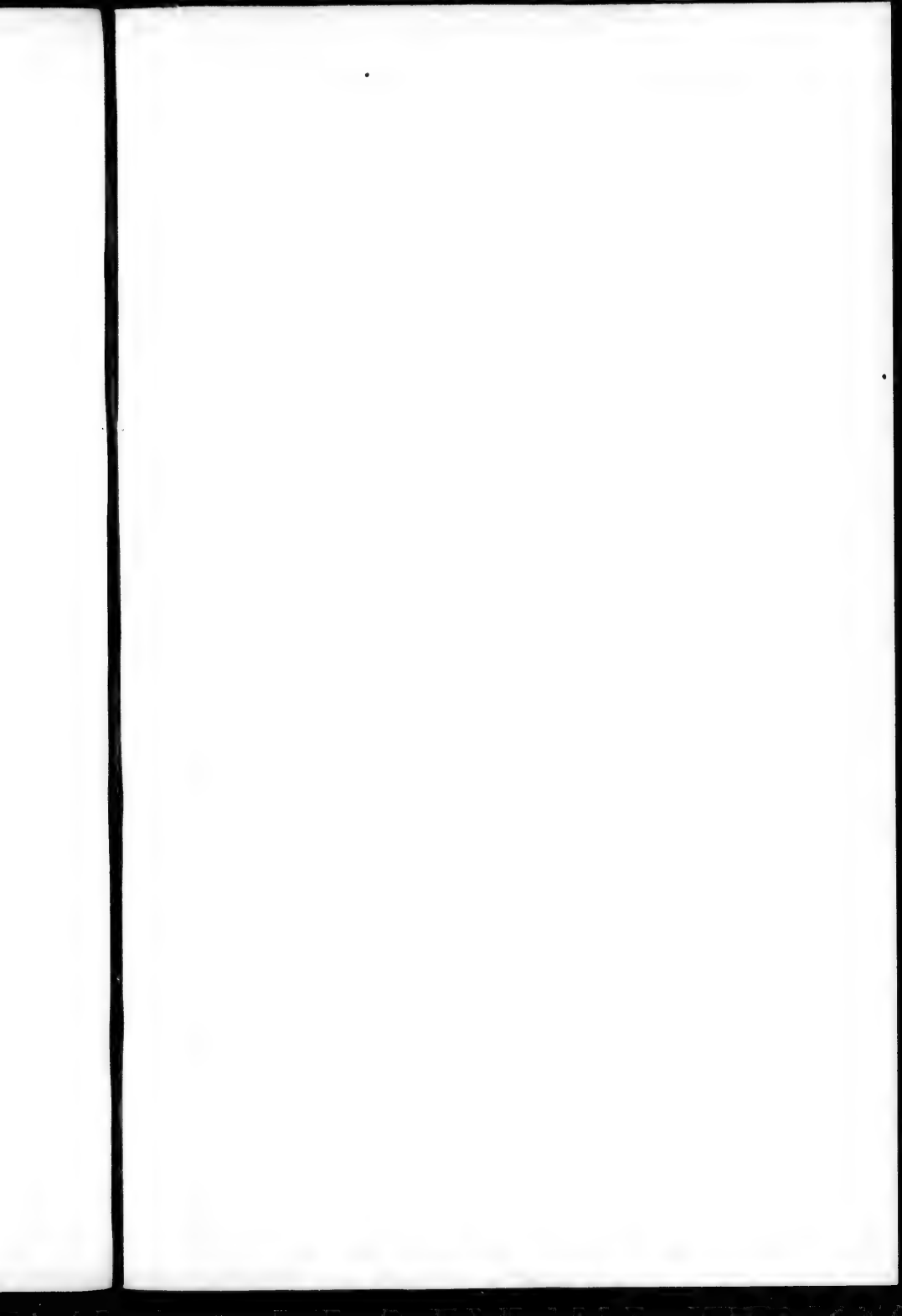
"It has permitted Federal officers to act as agents of the said monopoly;

"It has permitted Federal officers to become stock holders in said monopoly."

Comments of the press, to the same effect, are then given.

The statement gives the following from a high authority, a distinguished officer of the United States' army, General Jefferson C. Davis, com-





manding the Department of Alaska, who reported :—

"Since the declaration of Congress, at its last session, of St. Paul and St. George Islands as special reservations of the Government, they have been under the control of officers of the revenue service, sent there for the purpose of executing the laws prohibiting the landing at or killing of fur-seals upon them. During my official visit there, in the beginning of the present summer, and while engaged in investigating the affairs of the natives, as well as the manner in which the troops had performed their duties, I learned that, under one pretext and another, privileged parties had been permitted to land and remain on those reservations, and had been allowed to kill the animals at pleasure. During last summer at least 85,000 seals were killed on the two islands; probably more than that number. The pretext under which this was authorized was that of enabling the natives to subsist themselves without expense to the Government. In an economical point of view, this would seem quite right; but the facts are that the natives are cooped up on these islands, where they are compelled to work for those private parties or starve; in other words, *they are to-day in a complete state of slavery*. Competition in trade has been universally established, and it is now pretty well understood by the natives and traders throughout the country: wherever the former can paddle his canoe, or the latter penetrate with his goods, such is the case. *These isolated Islands of St. Paul and St. George, in Behring Sea, the richest possessions in natural wealth, considering their small area on the continent, form the only exceptions. The natives are peaceful, honest, and capable of transacting ordinary business quite well, and would doubtless improve themselves if they had a fair chance; but their present complete enslavement and robbery, by an unscrupulous ring of speculators, will ever prevent such progress.*"

Report of Brevet
Major-General
Commanding,
Department,
Alaska, to Secre-
tary of War,
August 20, 1870.

General Howard in his Report, referring to this history, said :—

"Of course, I have not the means of judging of the truth or falsity of most of the statements therein contained; but do believe it to be a mistake, and a dangerous precedent, on the part of our Government, to give into the hands of any Company, however benevolent in its intentions, so vast a monopoly. The subject comes to me directly in the performance of my military duty in the execution of laws and instructions concerning ardent spirits, the sale of arms to Indians, and other police measures."

General Howard's
Report on Alaska,
Ex. Doc. 83, p. 150,
44th Cong.,
1st Sess.

The following, however, is from evidence taken on some of the charges before a Congressional Committee in 1876.

The investigation was, it appears, not as thorough and impartial as might have been

expected, but many of the material facts were established:—

"From testimony of George P. Ihrie.

44th Cong.,
1st Sess., H. Report,
No. 623, p. 86.

"Q. Please state your residence and position?—A. I was formerly a Paymaster in the United States' army, and am now residing in New York city.

"Q. During the time that you were in the military service were you at any time stationed on the Pacific coast?—A. Yes, Sir; in the latter part of 1869 and greater part of 1870 I was stationed in Sitka, Alaska, a Paymaster for the purpose of paying United States' troops in that domain. . . .

Ibid., p. 87.

"The Witness.—The bid of Mr. Goldstone for the lease of the islands is 262,500 dollars per annum for the privilege of killing not to exceed 100,000 male pups; 55,000 dollars for the rental of the islands; that makes a sum total of 317,500 dollars. He also proposed to pay 55 cents per gallon for the seal oil that he may take from those fur-seals. Those Aleuts who kill those fur-seals told me, through the interpreter, that they would yield from 1 to 3 gallons per seal. That the number of gallons is not fixed in this bid of Mr. Goldstone; but it is to be presumed that when he offers 55 cents per gallon for that oil he proposes to take some. Hence their bid is 317,500 dollars per annum, plus 55 cents per gallon for every gallon of fur-seal oil that he takes. They were prepared to enter into that contract. Their bid is on record. Hence, so far as the bids are concerned, it strikes me that that offer of Mr. Goldstone is better than the award of the contract to the present Alaska Commercial Company. . . .

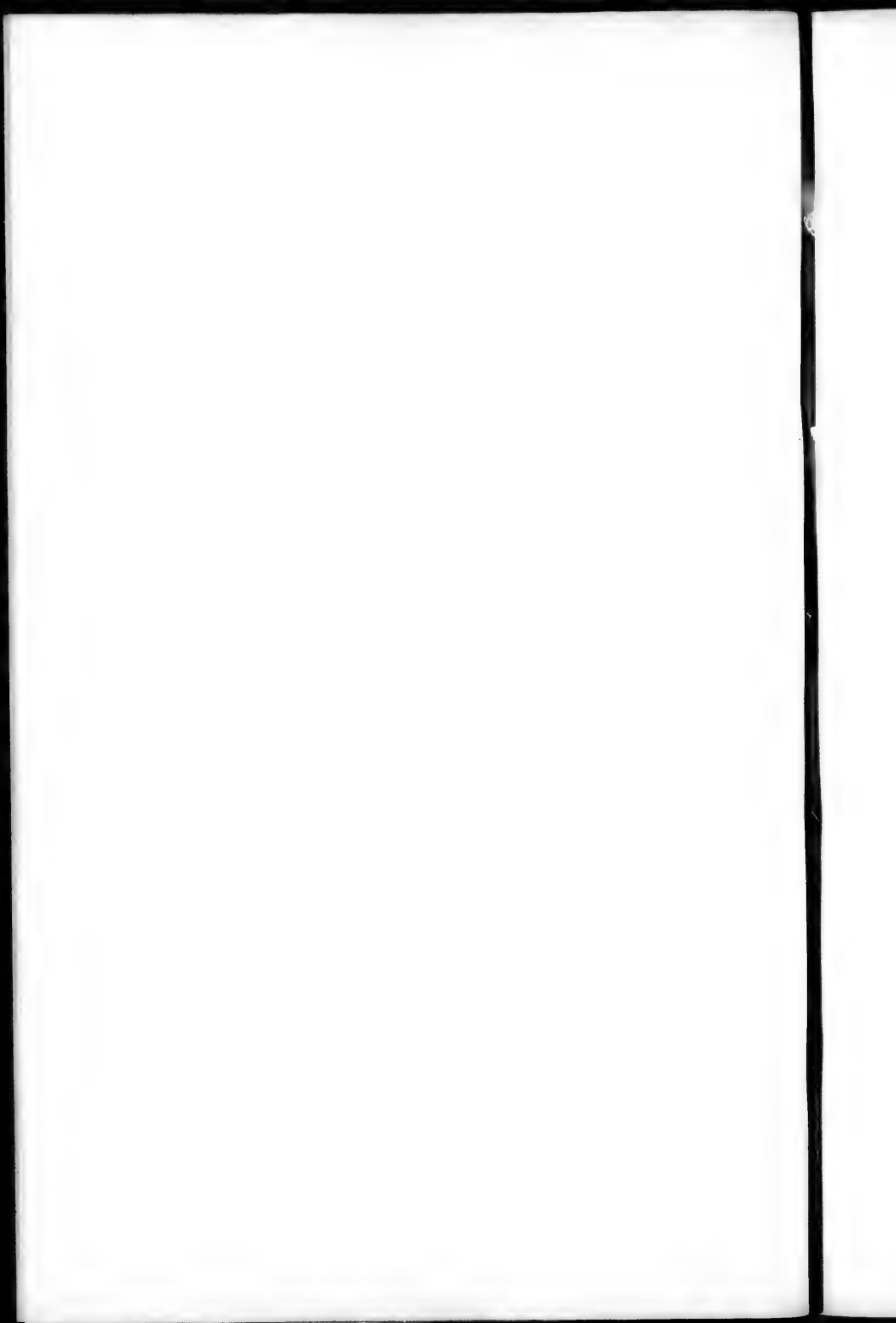
Ibid.

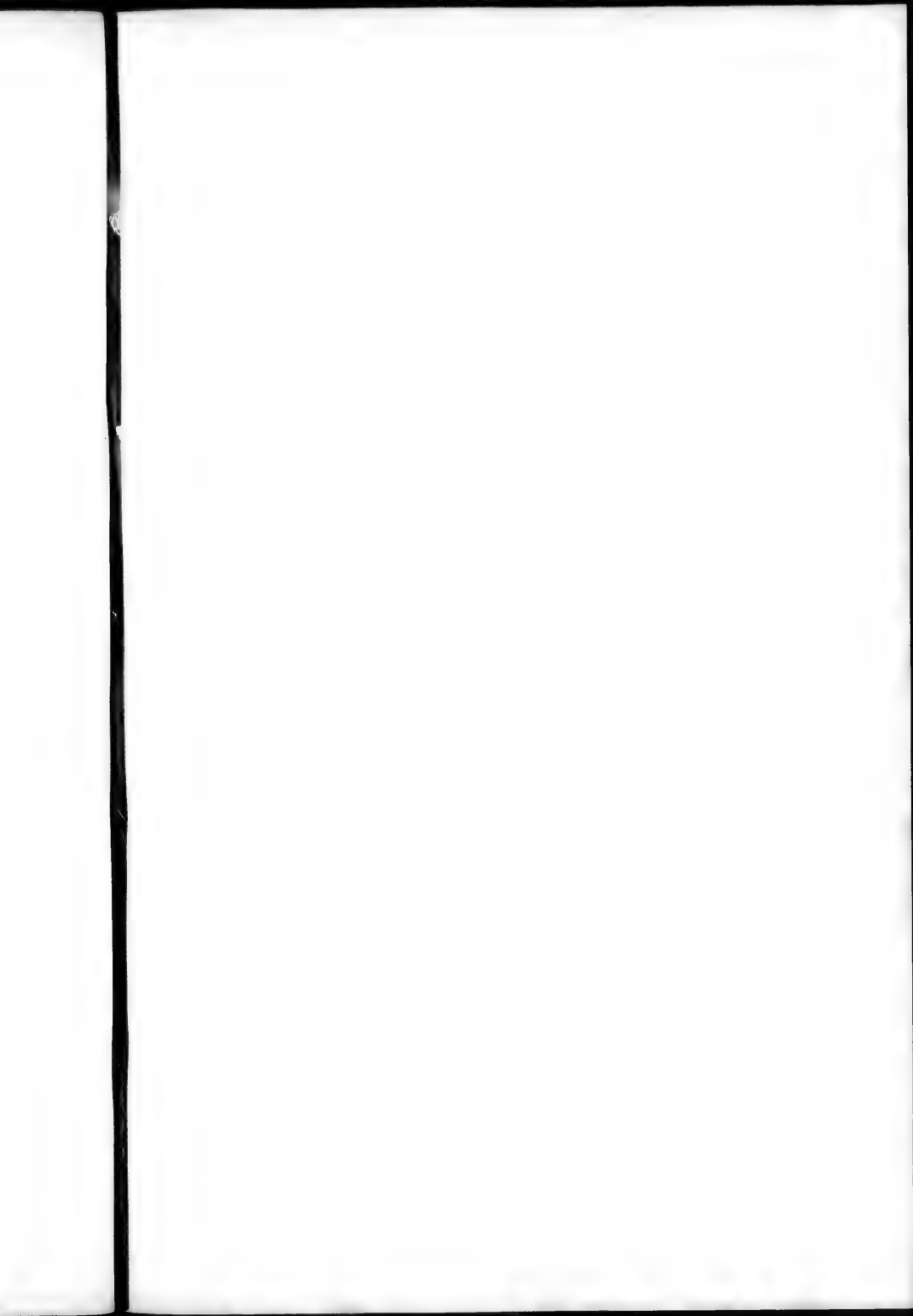
Ibid., p. 88.

"A. There was not sufficient time given between the advertisement for proposals and the opening of the same. The advertisement was the 8th July, 1870. The bids were to be opened on the 20th July, 1870, giving but twelve days to hear from the citizens of the United States, or any parties interested in that line of business, directly or indirectly, to make proposals. It was impossible, for instance, to reach Sitka in twelve days; you could not reach San Francisco by letter and get an answer by letter in twelve days. You cannot do it in less than fourteen to-day. You could only reach San Francisco and Portland, Oregon, where there are men engaged in this fur business, in fourteen or twenty days.

"Q. Then do we understand that, in your judgment, the lease was executed too soon after the passage of the law?—A. Entirely too soon, Sir. It was unjust. It was taking snap action on parties who had a right to make proposals or bids.

"Q. Do you know of any parties that were prepared to make offers that did not bid?—A. Yes, Sir. The same parties that made that proposal six months before the advertisement for those bids were prepared to put in a proposal.





"Q. Of your own knowledge, can you say that they would have made a better offer than was made?—A. I certainly do; positively, Sir; being one of the parties interested. We were in Sitka, Alaska, and could not possibly communicate with the Government short of forty or sixty days, and yet but twelve days were given by the Secretary of the Treasury for the advertisement, the receipt, and the opening of the bids. . . ."

The Governor of Alaska in 1867 confirms largely many of the predictions and allegations set out in 1875 by the memorialists on the Pacific coast.

His Report is a vehement denunciation of the system maintained by the Federal Government, and now sought to be vindicated in the Case of the United States submitted to this Tribunal.

The Governor reports as follows:—

" . . . The fur trade of Alaska is practically monopolized by the Alaska Commercial Company, a non-resident Corporation. . . . Clothed by the Government with a monopoly of the fur-seal trade, by which it has profited to the extent of many millions, it has, octopus-like, thrown out its great tentacles and gathered to itself about all there is of value in the fur trade of the whole territory. It has by the power of its great wealth driven away all competition, and reduced the native population wherever its operations are not supervised by Government officials to a condition of helpless dependence, if not one of absolute and abject slavery.

Report of the Governor of Alaska, p. 31, "United States' Congressional Reports relating to Alaska," Washington, 1889.

Ibid., p. 32

"While all this and much more is true concerning its treatment of the native people, instances are not lacking where it has boycotted and driven away from the islands Government officials who, intent upon the honest and faithful discharge of their duties, have incurred the displeasure or refused to do the bidding of its agents. In fact, it possesses the power to compel compliance with its every exaction, and wherever it has obtained a foothold neither white man nor native can do more than eke out a miserable existence, save by its suzerainty.

"I have positive information of flagrant violations of the law and executive orders in relation to the importation and sale of breech-loading fire-arms by its agents; its oppression and robbery of the natives is notorious.

"If it cannot legally be rescinded, the lease to, and contract with, this Company ought not to be renewed."

Entirely opposed to the statement now advanced by the Case of the United States, the Governor of Alaska concludes ' ' Report as follows:—

" . . . It is not, . . . any opinion, necessary to the preservation of seal life or the seal-fur industry that the

Ibid., p. 33.

islands on which the rookeries are located should be leased to any Corporation or individual, but if it be held that I am wrong in that regard, then I do not hesitate to aver that it would be better for Alaska, better for the Government, and, above all, far better for the enslaved Aleuts, that every fur-seal in Alaskan waters should be exterminated at one fell swoop, than that such a blighting monopoly should be perpetuated."

50th Cong.,
1st Sess., H. R.,
Ex. Doc., No. 297.

This Report was transmitted by the Secretary of the Interior to the House of Representatives, and on the 4th May, 1888, was referred to the Committee of Merchant Marine and Fisheries.

This Report is introduced by the following explanation to the Speaker of the House of Representatives:—

"Sir,

"Section 5 of the Act of the 17th May, 1884, entitled, 'An Act to create a Civil Government for Alaska,' provides:—

" 'The Governor appointed under the provisions of this Act shall from time to time inquire into the operations of the Alaska Seal and Fur Company, and shall annually report to Congress the result of said inquiries, and any and all violations by said Company of the agreement existing between the United States and said Company.' "

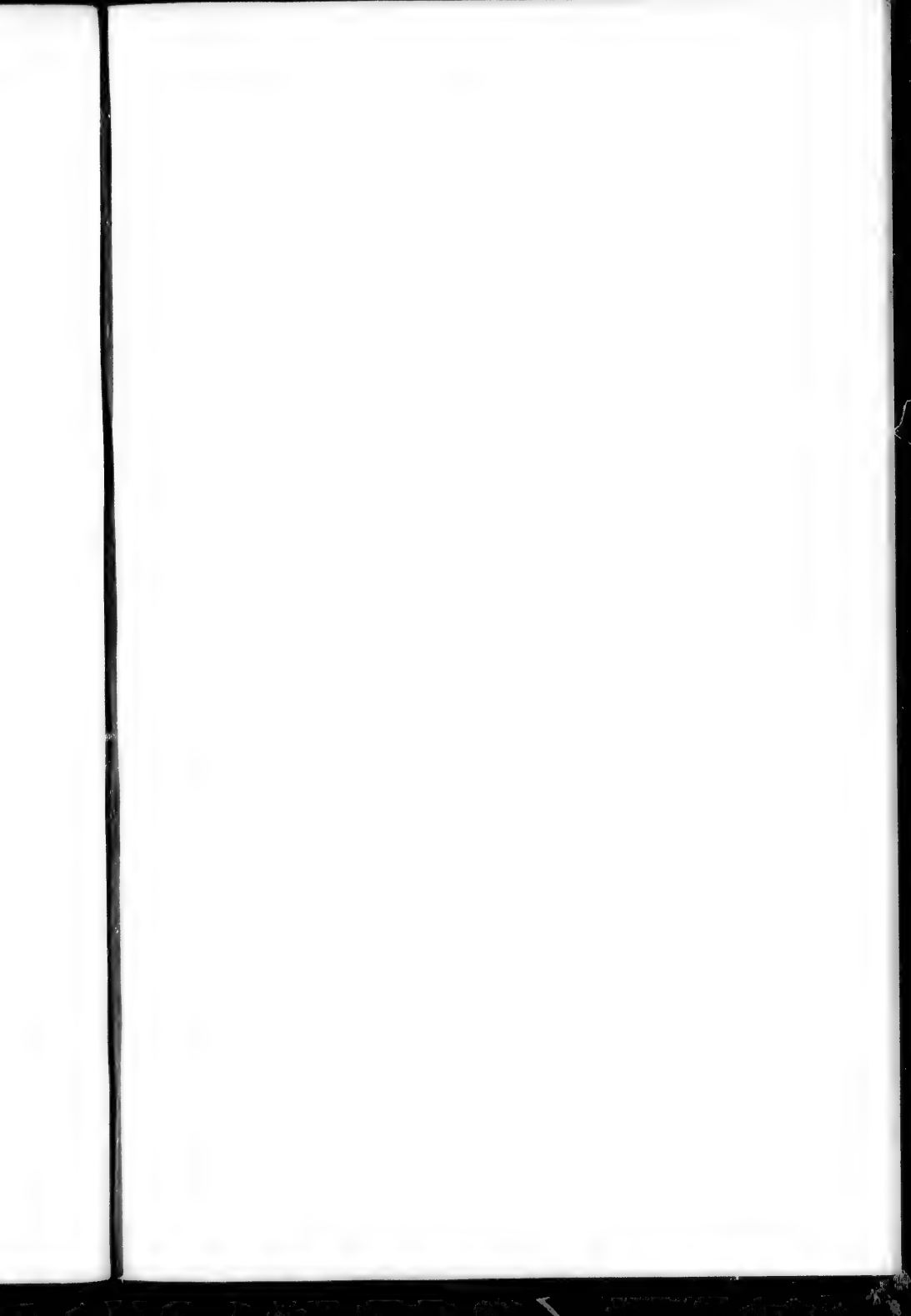
Accompanying the Report is a deposition of Isaac Anderson, Deputy Marshal of the United States at Ounalaska, and formerly in the employ of the Company.

The following statements are made by Mr. Anderson:—

Report of the
Governor of
Alaska, p. 8.

" Affiant further deposes and says that it is true of his own knowledge that for years it has been the practice to kill from 10,000 to 15,000 fur-seal pups every season on their passage from the islands to the bays and waters about Ounalaska Island, with breech-loading fire-arms supplied by the Company's agent who encourages such killing, and pays 80 cents per skin for each seal-skin taken in violation of the law. That said agent also fits out and sends every year hunting parties equipped with the breech-loading fire-arms, and the past season a vessel so equipped for the other hunting grounds during the summer season in violation of the laws of the United States and Regulations of the Treasury Department.

" That he has personal knowledge that said Commissioner Johnston sold a breech-loading rifle to a native, one Ivan Diakonoff, the 26th April, 1887, in express violation of the orders of the Secretary of the Treasury and of the Governor of the territory, which instructions had been shown to said Commissioner by this affiant; that said Commissioner treated said orders of the Governor of



Alaska and the Secretary of the Treasury with contempt, and permitted said Diakonoff to take the said gun on board the schooner 'Mattie Turner,' belonging to the Alaska Commercial Company, and proceed to the well-known otter hunting grounds.

"Deponent further says that when certain vessels were seized in July and August 1886, and were brought to Unalakleet by the United States' revenue-cutter 'Corwin,' said seizures were separated, the seal-skins being taken from the vessels and deposited in the warehouse of the Alaska Commercial Company, nominally in the custody of this affiant, but actually in the possession of the Alaska Commercial Company; that they were stored in an inclosed space in the warehouse of said Company, properly sealed with tape and wax; that when this affiant received an order from the United States' Marshal at Sitka, dated the 23rd April, 1887, to ship the skins, 2,082 in number, to the care of the United States' Marshal at San Francisco, California, this affiant applied to the said Agent Neuman for permission to ship the skins on the Company's steamer 'Dora,' and requested to be informed when he would be in readiness to receive them on board, to which request said Neuman assented; and that subsequently, and to affiant's surprise, on going to the warehouse, he found that the seals, seventeen in number, protecting the fur-seal skins, had been broken, and about one-half of the seal-skins packed in barrels; and that when he remonstrated at such conduct, and attempted to give instructions as to the marking of the packages for their proper identification, he was grossly insulted by said Neuman's employes, and told that affiant was meddling in matters that did not concern him; that said Commissioner Johnston, who was acting in concert with and under the influence of said Neuman, insolently demanded copies of the instructions from the United States' Marshal which affiant refused to make, but offered to let them read the instructions, and to give written request, as an officer of the United States, for the shipment of the skins; that upon this refusal Commissioner Johnston violently assaulted affiant, aided by said Neuman and one of his assistants.

"Deponent further says that he believes that the breaking of the said seals which protected the inclosure containing the fur-skins, and defying the authority of this affiant, was for the purpose of being enabled to increase the expense of handling the property under seizure and of tampering with the same. That when affiant received for the said seal-skins in 1866, there were only fifteen pup-skins in the whole number of 2,080 skins under seizure, and that he is informed and believes that between sixty and eighty pup-skins of inferior value and worthless were found among the 577 fur-seal skins sold at San Francisco by the United States' Marshal in the month of November 1887 which substitution either defrauded the claimant of the skins or the Government of the United States.

"Deponent further says that during the past fishing season fifteen seals were seized on Behring Sea and

Report of the
Governor of
Alaska, p. 6.

taken to Ounalaska, having about 12,000 fur-seal skins on board, which were taken out and stored in the warehouse of the Alaska Commercial Company without any good reason therefor. That deponent proposed to have the said skins placed in the Government warehouse, where they could be properly handled, protected, and cared for, but affiant's suggestions were objected to.

"Affiant further represents that he was prevented from counting the said seal-skins taken from said vessels, or of having anything to say or do with regard to their custody, and that when he attempted to do so he was insulted, and on a previous occasion one of the employees of the said Neuman drew a revolver upon this affiant.

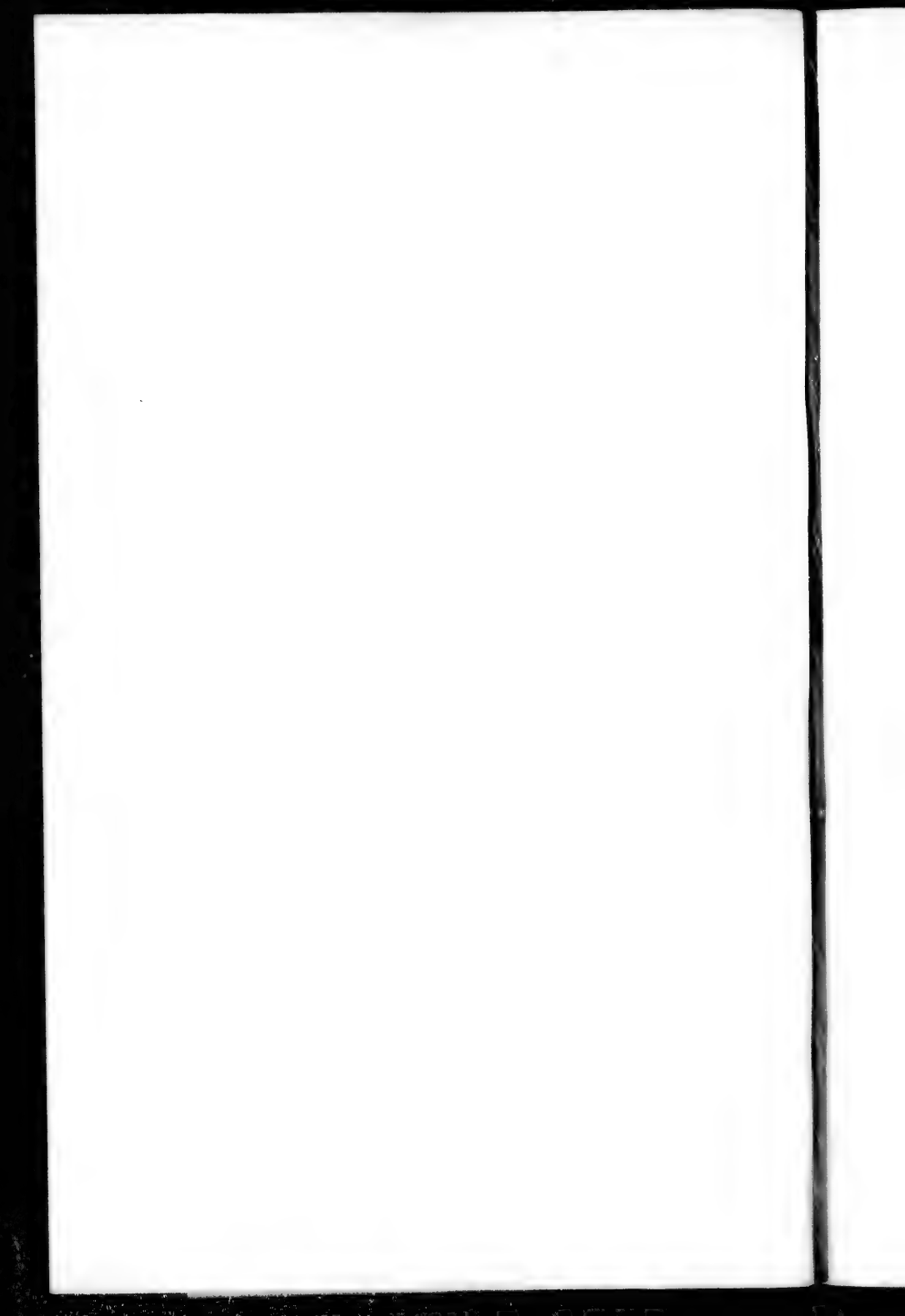
Report of the
Governor of
Alaska, p. 7.

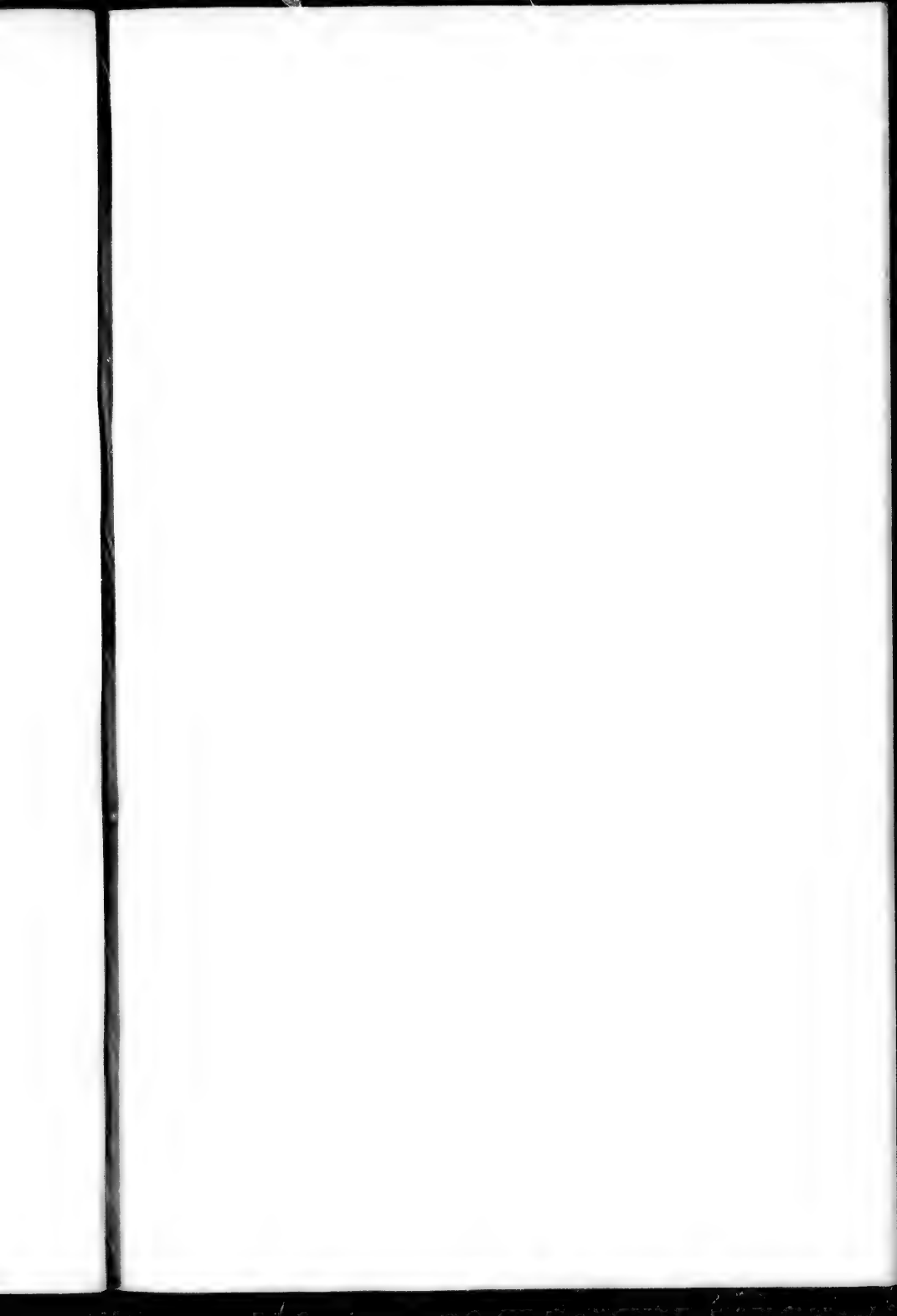
"Deponent further says he resigned his office of United States' Deputy Marshal in consequence of being obstructed in his official duty by the agent of the Alaska Commercial Company and the United States' Commissioner, and that he could not act by reason of such interference.

"Affiant further declares and says that large quantities of villainous extracts, compounded of alcohol and vile substances, and marked 'Bay Rum,' 'J. J. Mack's Extract,' &c., are shipped to Ounalaska on vessels owned by the Alaska Commercial Company, and sold or given to the natives for the purpose of intoxicating them at certain times when the Company's agents wish to cheat and extract the blubber out of their seal- and otter-skins and other articles of traffic; that said drinks are landed at Ounalaska by permission of the Deputy Collector of Customs thereat, and there disposed of or shipped to other stations for like purposes.

"That beer, porter, whiskey, wines, and other liquors are plentiful at Ounalaska, which is often given to natives, and in some instances it has been sold by the barrel, and that the most indescribable and wretched exhibitions of human depravity are produced by a vile drink called 'quass,' manufactured extensively all over the district, and in some instances it is made at Ounalaska at the instigation and connivance of said Company's agent, and dealt out to the natives at said agent's office.

"Affiant further says that it is a common practice among the Company's agents to sell or loan breech-loading fire-arms to the natives, well knowing that said arms are to be used in violation of law, and intending that they shall be so used, and that their use or value is paid for in seal, otter, or other skins, and that affiant knows that nearly every native or white hunter in Alaska has one or more breech-loading rifles obtained from the Company's agents, which they use entirely for hunting; that said Company has so managed its dealings with the natives as to have them all, or nearly all, of the natives indebted to the Company; that in some cases debts of natives owed to others are purchased by said Company, and the proceeds are transmitted from either to some of the family members of the family receiving the same, and that the Company has the purpose of keeping the natives under its control and influence thereat.





"Affiant further says that it is within his knowledge that vassalage, demoralization, and crime are increasing among the natives at the Company's stations in the Aleutian group of islands, where the Company had undisputed control; that the natives are rapidly dying off from drunkenness and consequent exposure; that all rivalry in trade has been broken up by force or by purchase, where rival interests are too great to be dealt with in such manner; that said agent may, by impoverishing and oppressing the natives, derive large profits in procuring their peltries for insignificant sums, or in exchange for other commodities at extravagantly high prices, and that the crime of disfiguring the coin of the United States has been resorted to in their dealings with natives to break up competition in trade."

In a further Report by the Governor of Alaska, dated the 10th December, 1888, it is stated:—

"... Notwithstanding the 'reply' of this Company over the signature of its President, in which the charges made in my last annual Report against it are so positively denied, I now and here reiterate every one of those charges, though I know full well that an investigation made by a Committee of Congress holding its sessions in Washington, and calling as witnesses only those who have been recipients of the Company's favours, is not likely to arrive at any just conclusion as to their truth or falsity. I can only say that each and every statement I have made concerning the operations of this Company is susceptible of the clearest and most convincing proof, but the evidence will not be found lying around loose in the cities of Washington and San Francisco; it must be sought for among the people who have suffered from its oppressions rather than in the persons of those who have had free transportation on its ships, and been wined and dined at the tables of its officers and agents

50th Cong.,
2nd Sess., Ex.
Doc. 74, pp. 2-13

It has violated the law and executive orders in relation to the importation and sale of breech-loading fire-arms. At every Settlement visited by me I found the Aleuts in possession of Winchester rifles, and at most of the places they candidly admitted having purchased them from the Company's agents.

I do not think it will be claimed that the executive order of the 9th September 1870 authorized the sale of breech-loading fire-arms to the natives of St. Paul and St. George Islands, though it did permit their importation by the Company. Yet, I found that many of those natives had purchased such arms from the Company in Alaska. On my way home I was waited on by a delegation from those islands who complained that the guns they had bought and paid for had been taken from them by the Government Agents. Evidently I am very much mistaken as to the purport and meaning of the second executive order that have been promulgated concerning

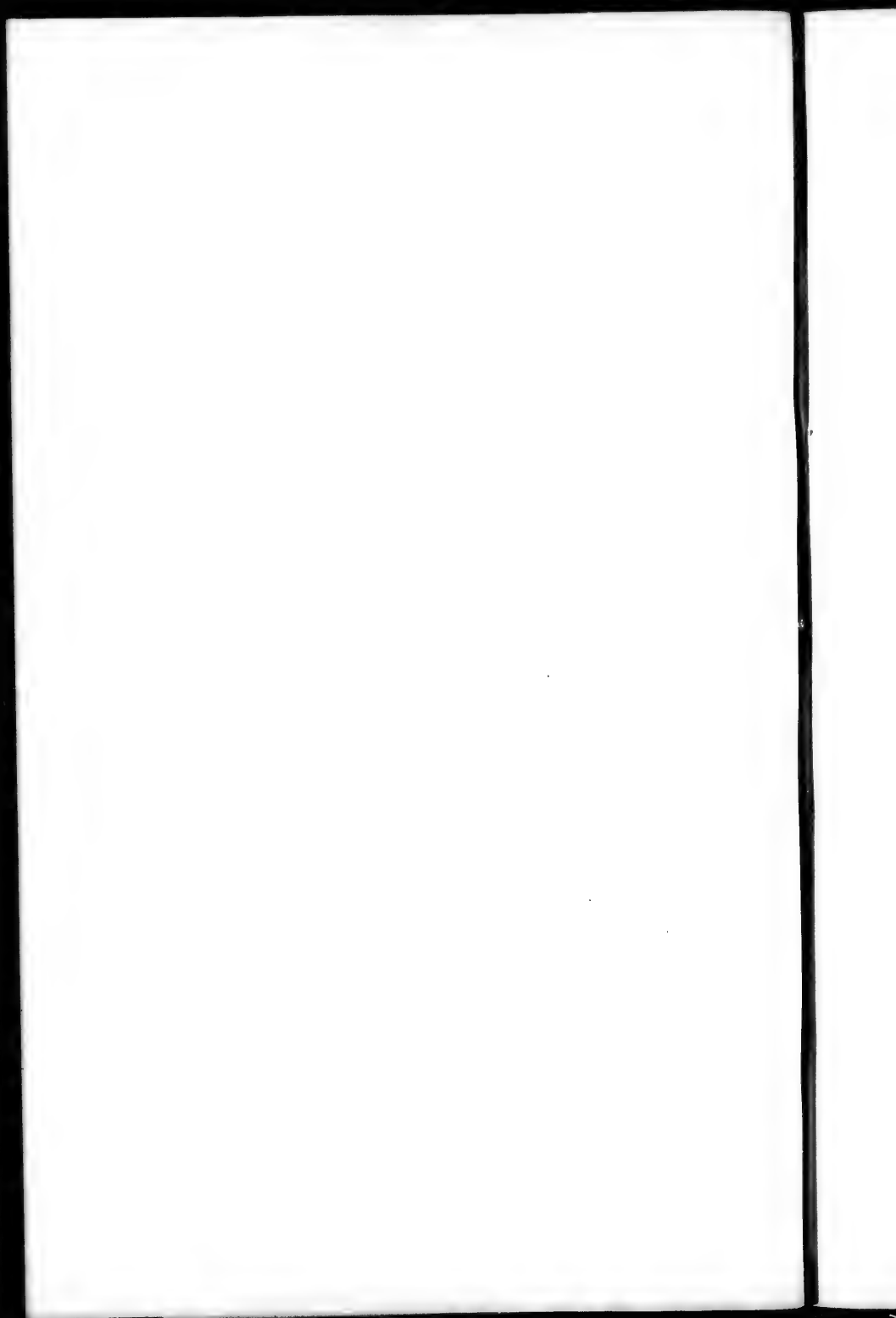
the importation and sale of breech-loading fire-arms, or else those orders have been persistently and wholly ignored by this Company, some of whose agents make no secret of the fact that they have sold such arms to the natives.

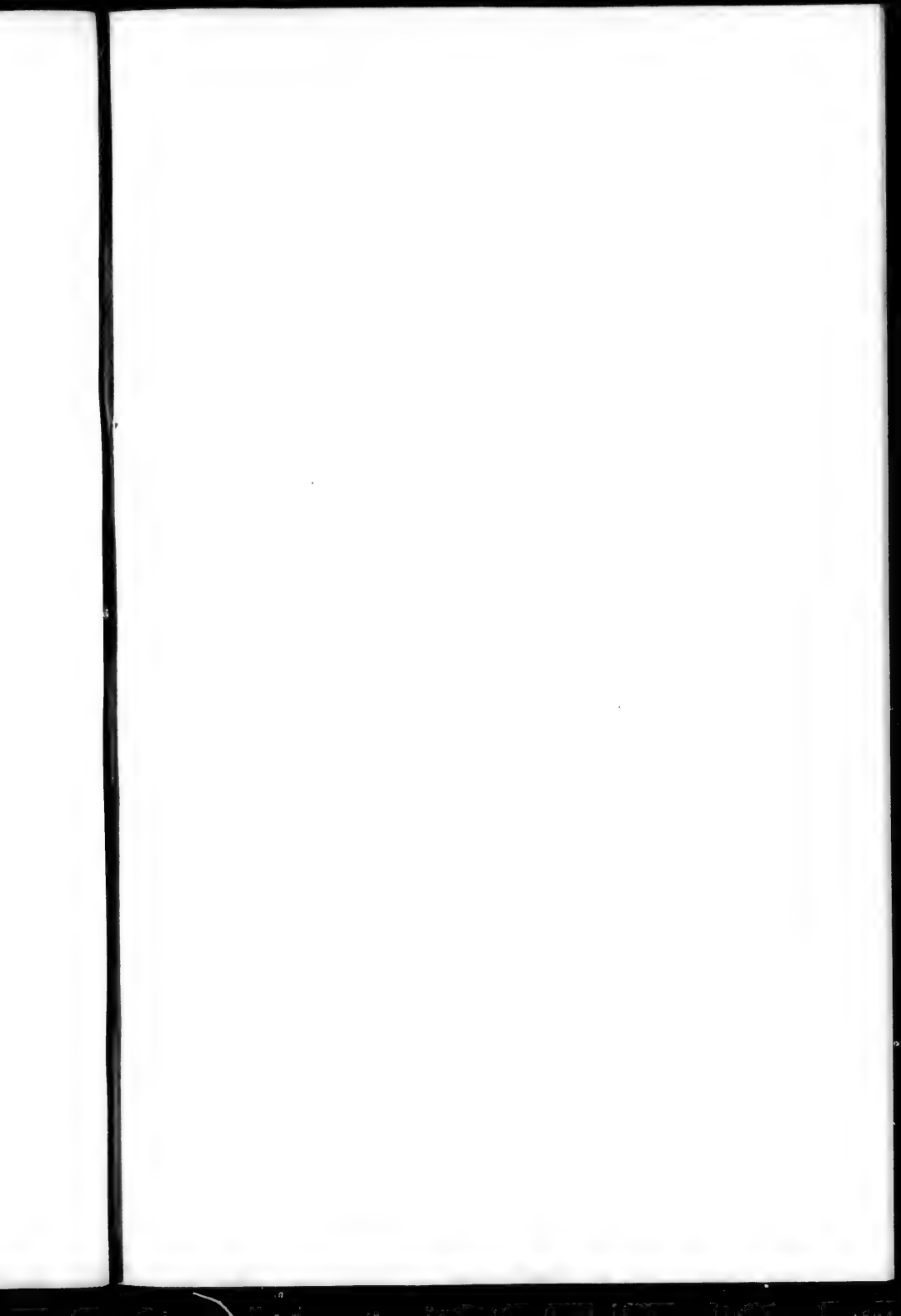
"It has boycotted and driven away from the islands at least one Government official who had incurred the displeasure and refused to do the bidding of its agents, and the fact was known to its President when he appended his signature to the denial of that and other charges.

"The members of the House Committee on the territories in the Forty-ninth Congress do not require any proof of the truth of the charge that 'its paid agents and lobbyists are kept at the national capital to oppose any and every effort to promote the welfare of Alaska' through necessary legislation; the presence of such a lobbyist before that Committee, and his admission of the otherwise well-known fact that he is paid a regular salary by the Company, though he has not been in Alaska for a dozen years, the fact that he appeared before that and previous Committees opposing much-needed legislation for Alaska, is in itself sufficient evidence of the truth of the charge. Why else should the Company need the services of the man in Washington during every session of Congress?

"So far from having been actuated by any personal feeling, I wish to say that if the system of leasing the Seal Islands, without restriction as to trade in other parts of the territory, is to be continued, very little in the way of reform is likely to be accomplished by dispossessing the present lessees in favour of some other individual or Corporation. It is the system, or principle, that most merits condemnation. Any other Corporation granted the same exclusive privileges would naturally strive to make the most of the opportunities presented, and I can see no prospective good to accrue to the territory through the dispossession of one monopoly merely to make place for another, and possibly worse one.

"In my last Annual Report, I submitted very briefly my views as to the policy which should, in my opinion, be adopted by the Government in regard to the fur-seal industry. A visit to the rookeries has not served to change or modify those views. I can see no good reason why the present monopoly of the business may not be abolished, not only without loss to the Government, but to its very great advantage so far as the amount of revenue to be derived is concerned. The present system of farming out the rookeries is not only obnoxious to every sense of right and justice, but, as I think I have shown, is in a very great degree inimical to the best interests of the territory.





APPENDIX.

A suggestion has been made to this Department in various forms that the Government should lease these islands for a long period of time to a Company or firm for an annual sum of money, upon the condition that provision should be made for the subsistence and education of the natives, and that the fisheries themselves should be preserved from injury. This plan is open to the very grave objection that it makes a monopoly of a branch of industry, important not only for the people of the islands, but to the people of the United States, if the preparation and manufacture of the skins for use should be transferred from London to this country. Such a monopoly is contrary to the ideas of the people, and not many years would pass before serious efforts would be made for its overthrow. Moreover, the natives of the islands would be under the control of the Company, and as the expiration of the lease approached, the inducements to protect them and preserve the fisheries would diminish, especially if the Company saw, as would probably be the case, that it had no hope of a renewal of its privileges. Under these circumstances, the Government of the United States would necessarily be subjected to a great expense and trouble.

41st Cong.,
2nd Sess., Ex. Doc.,
No. 109.

For these reasons, briefly stated, but valid, as they appear to me, I cannot concur in the suggestion that the islands should be leased to any Company for a period of years.

Inasmuch as it will be necessary for the Government of the United States to maintain in and around the islands a military and naval force for the protection of its interests under any plan that can be devised, I am of opinion that it is better that the Government should assume the entire control of the business of the islands, and exclude everybody but its own servants and agents; that it should establish a rigid system of police, excluding from the islands distilled spirits and fire-arms, and subject vessels that touch there to forfeiture, except when they are driven to seek shelter or for necessary repairs. The conditions of such occupancy and control by the Government of the United States seems to me to be these:—

1. The exclusion of other parties.
2. The supply to the natives of such articles as they are accustomed to use.
3. Compensation to the natives for their labour, and the payment of a sufficient additional sum each year to enable them to live in the manner to which they have been accustomed.
4. An equitable division of the value of the skins over the payments made to the natives, and the cost to the Government of the United States of maintaining such force as is necessary for the protection of the business.

The portion of the surplus equitably belonging to the natives might be set aside for the purpose of education and religious teaching, the erection of more suitable dwellings than they now possess, and generally for their physical, intellectual, and moral improvement.

If the Government were to lease the islands, it would not be possible to withdraw entirely the military and naval forces, or to neglect a careful supervision, and the additional expense consequent upon retaining possession of the business of the islands in the hands of the Government would not be large.

Ordinarily, I agree in the opinion that a Government, especially one like that of the United States, is not adapted to the management of business; but this clearly is a business which cannot be left open to individual competition, and if it is to be a monopoly, whether profitable or otherwise, the interest of the Government is so large, and the expenses incident to the protection of these islands so great, that it cannot afford to substitute to any extent the monopoly of an individual or of a Company for its own lawful supervision.

Should the Government fail in the attempt to manage the business through its own Agents, there will then be opportunity to lease the fisheries to private parties; but my opinion is that a larger revenue can be obtained from them by actual management than by a lease.

When the proposition to place an exclusive lease in the hands of a Company came before Congress, Mr. Fowler said:—

"Congressional
Globe." Part II,
40th Cong.,
3rd Sess., p. 1497,
Senate,
February 23, 1869.

"... I wish to state my reasons for resisting the passage of this Bill. This is the first Bill of the kind ever proposed in the Congress of the United States. It is a Bill to place in the hands of a particular Company an entire trade, one of the most bold-faced monopolies ever attempted to be placed over any people in the world. Certainly the people of the United States have never witnessed the like of such an infamous proposition as this, to give into the hands of a particular class of individuals the right to possess this very valuable trade. You might as well authorize them to go into the Treasury of the United States and take out so many dollars without any consideration whatever. It is a proposition that never could have met the approbation of an American Congress twenty years ago. I think the Bill is perfectly outrageous. There is not a solitary reason in its favour. . . ."

On this subject and on the power of the Company, Senator Beck spoke in 1874 when it was proposed to send Mr. Elliott to the islands as a Special Commissioner:—

"Congressional
Record," vol. ii
Part III,
43rd Cong.,
1st Sess., p. 2737,
H. R., April 2,
1874.

"... I opposed it for this reason: while I have the highest appreciation of the talent of the young gentleman named (Mr. Elliott), whose Report I have read, and to whom I have listened with much pleasure before the Committee, and while I am prepared to say his work and his learning are everything to satisfy me that he is a young man of uncommon intellect, yet I do not think that

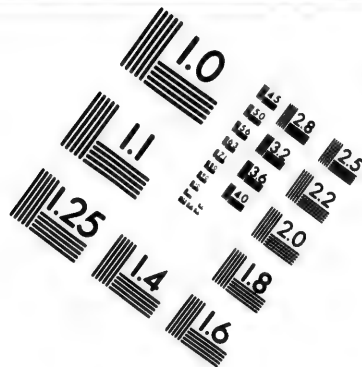
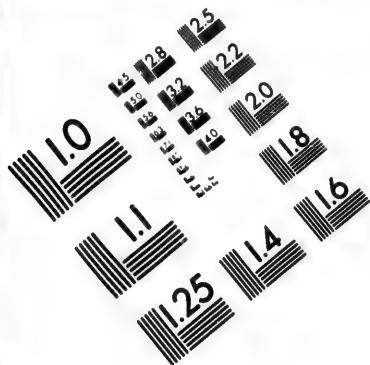
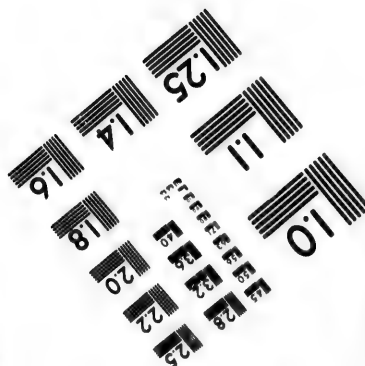
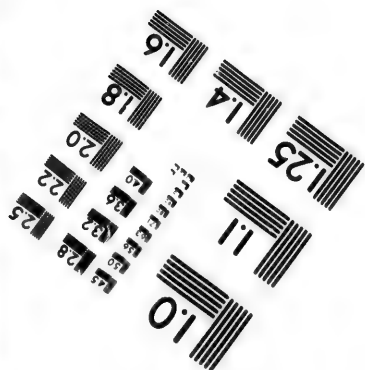
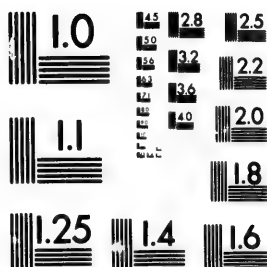


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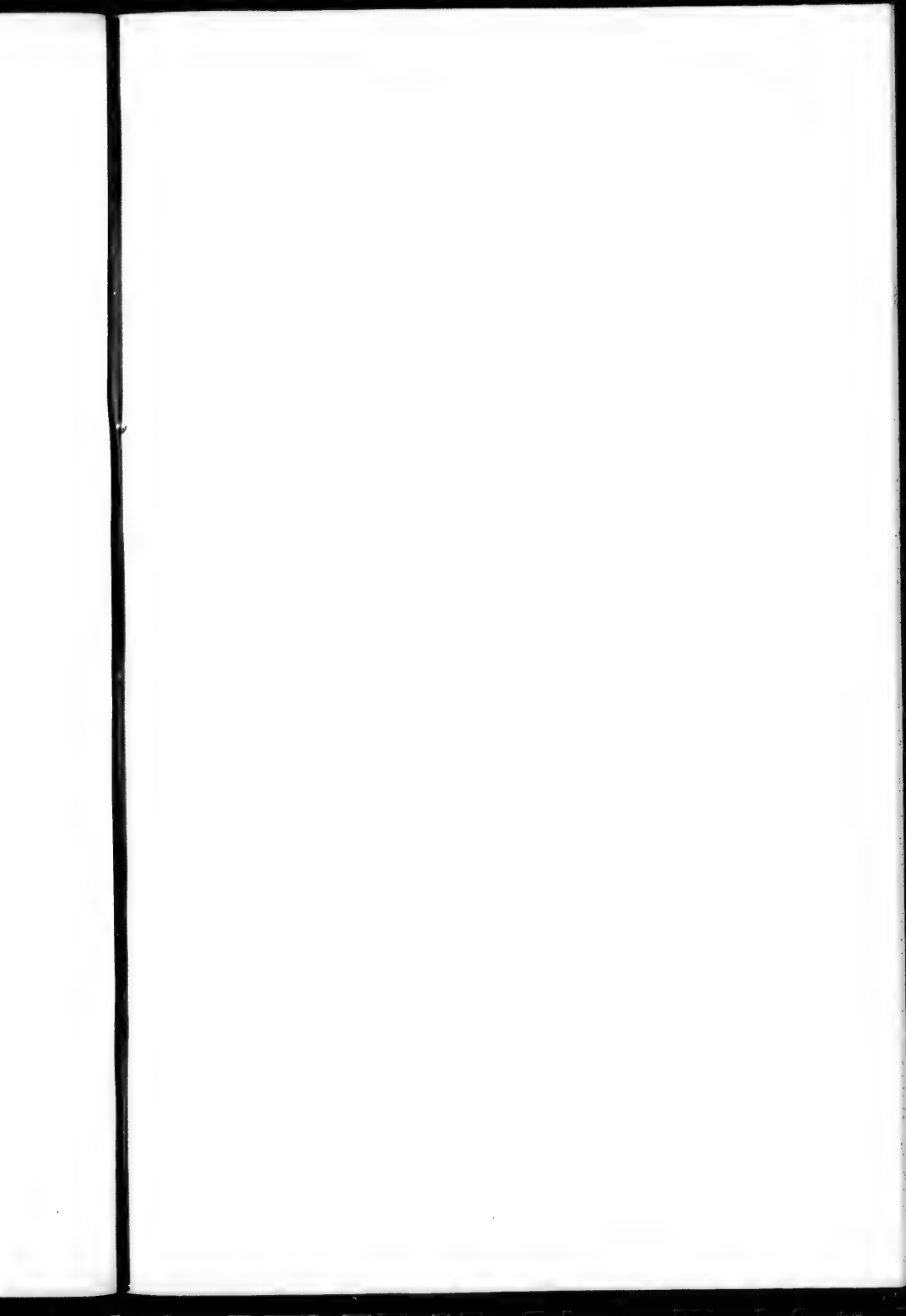


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it was a proper thing for the purpose I had in view to pass a special Bill to give him this employment alone. I will state my reasons briefly.

"We have a contract now with a great, rich, and powerful Company, whereby they agree to pay us 2 dollars a skin for 100,000 seals, and the rent for the islands amounts to some 50,000 or 60,000 more. We thus receive 200,000 dollars for 100,000 seal-skins, and from 50,000 to 60,000 dollars for the use of the islands.

"That Company may or may not be taking more than 100,000 seals. I believe that nearly 300,000 seals are taken from our islands instead of 100,000 under that Contract. There are houses in England that have a monopoly of the business. Not a seal-skin can be brought into this country—their monopoly is absolute. The skins are shipped from the islands to San Francisco, and thence to London; and there they are manufactured. While seal-skins cost them 2 dol. 50 c. a-piece, two good seal-skins make a full set for a lady, or three inferior ones, not costing the Company for a set over 5 dol. 50 c. or 7 dol. 50 c.; that monopoly enables them to sell those sets of furs at prices varying from 75 to 125 dollars in gold in London, or from 200 to 300 dollars a set in New York after they have been returned to this country.

"My opinion from pretty thorough information is, that these men are getting somewhere seal-skins to the amount of at least 300,000 a-year. That number are said to be in the market, and there is no other place to get them except what fur can be obtained from one Russian island. The Company has a general contract with the Government of Russia to take as many seal-skins as they please from the Russian possessions, but, as I learn, they get very few. I do not suppose they get 10,000 a-year from all the possessions of Russia. But that unlimited contract with Russia enables them to claim that all the seal-skins they have beyond 100,000 come from the Russian possessions, when in fact most of them are coming from our islands. . . .

" . . . Let us see that those Companies are not defrauding us, that they are not annually taking from us in excess of their contracts hundreds of thousands of seal-skins, as I believe they are now doing. And if, as Mr. Elliott reports, the number of seals that may be killed can be increased, and two or three hundred thousand can be killed—indeed, he supposes that as many as 400,000 may be taken annually without encroaching on the breeding ground—why, in that case, let contracts be made on the report of a responsible officer, after a thorough investigation, which would enable us to get what we ought to from these islands and prevent fraud, if there be any, from being perpetrated, if it should be developed, as I believe it would be, that we are now being defrauded.

"The relations between these people and the traders, or, more strictly, with the one Trading Company which has at present an overwhelming predominance throughout the Aleutian region, are peculiar, and require a word of explanation.

"The Aleuts, except on the Pribiloff Islands, gain a

"Congressional Record," vol. ii, Part III, 43rd Cong., 1st Sess., p. 2737, H. R., April 2, 1874.

Elliott's Report on Alaska, 1874, p. 232.

livelihood by hunting the sea-otter and by fishing. None of the islands afford any subsistence except that drawn from the sea.

"To hunt or fish, in fact, to live, the Aleut is totally dependent on his skin-canoe. To make this canoe he must have hair-seal or sea-lion skins. From various causes the sea-lions are not now to be found, as formerly, within reach of the large Settlements, except on the Pribiloff Islands. This made no difference under the Russian rule, as the sea-lion skins were taken under the Company's direction at the Pribiloff Islands, and were then distributed to the various points where they were needed, and were given to the Aleuts gratis. Now, on the contrary, they are obliged to buy them, and to buy them of the Company, who hold the lease of the Pribiloff Islands, except in very rare cases. As the Company's agents, in the natural course of business, will sell these materials only to those natives who are known to bring all their furs to the Company's store for sale, it follows that the lease of the fur-seal islands carries with it a practical monopoly of all the fur trade of the Aleutian nation, that is to say, the sea-otter as well as the seal trade."

General Howard's
Report on Alaska,
June 30, 1875,
p. 162.

The terms of the various offers were as follows:—

(1870.) The highest bid, amounting to a yearly rental of 227,500 dollars, was made by Louis Goldstone for a syndicate of San Francisco firms whose respectability and standing were said to have been unimpeachable. The bid of the Alaska Commercial Company—the lowest offered—was equivalent to a yearly rental of 65,000 dollars. The latter Company entering various protests against the bid of Mr. Goldstone, the case was referred by the Secretary of the Treasury (Mr. Boutwell) to the Attorney-General, who, after hearing argument on both sides, decided in favour of Goldstone and associates. Nevertheless, the lease was ultimately awarded by the Government to the Alaska Commercial Company at Mr. Goldstone's figure. The number of tenderers for the lease at this time was fourteen.

Schedule of prop-
osals for the
taking of Seals on
the Seal Islands,
1890-1910, United
States' Print,
Treasury
Department.

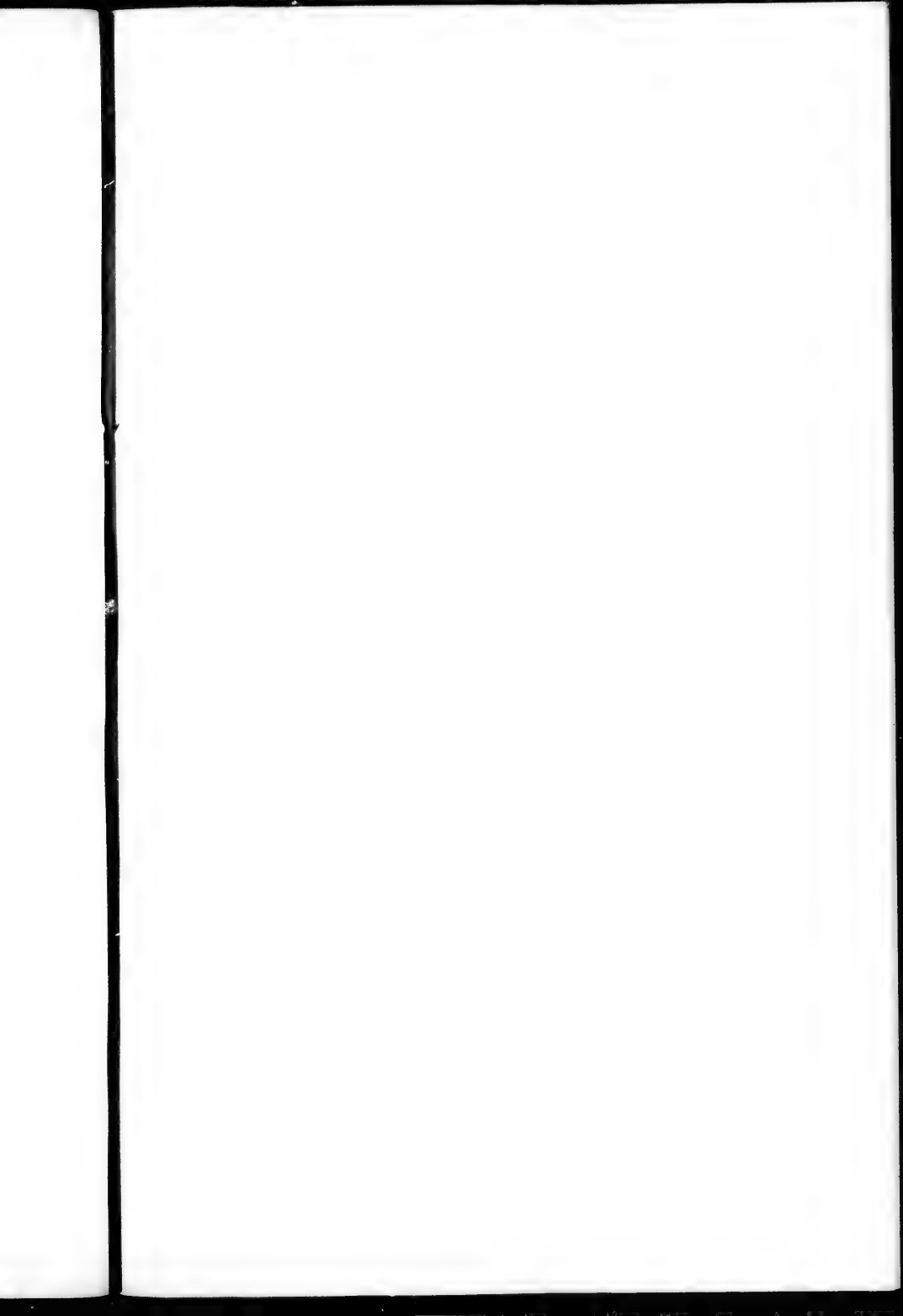
In 1890 twelve bids were received—two of which were informal and not considered—of which the principal features were as follows:—

*Tender No. 2.—The American Fishing and Trading
Company of San Francisco, California.*

Annual rental, 305,000 dollars, and, in addition thereto, the sum of 4 dol. 12 c. for each seal-skin shipped, incl of the revenue tax or duty—also to provide schools and care for the natives as Secretary of Treasury shall prescribe. Also 25 cents per gallon for seal oil shipped.

*Tender No. 4.—North American Trading Company, per
Chas. F. Benjamin.*

Annual rental, 55,000 dollars, and, in addition, a royalty of 4 dol. 50 c. per skin, as well as revenue tax of 2 dollars



per skin. In addition, schools and necessities for natives as Treasury Department shall prescribe. 30 cents per gallon for seal oil shipped. Establishment and maintenance of a monthly mail service between San Francisco and Seal Islands, touching at intermediate Alaskan points. Guarantees to use all reasonable and proper measures for the improvement of the native population; for the development of Alaskan industries and resources; for the preservation and improvement of the fur-seal industry, and will co-operate with Government Agents in preserving the unworked rookery at Otter Island; employment of skilled and experienced persons in management of its business, and due regard to suggestions of the Government, &c.

Tender No. 5.—The Pacific Steam Whaling Company, of San Francisco, California.

Annual rental, 50,000 dollars, and, in addition, 7 dol 15 c., inclusive of revenue tax of 2 dollars, upon each and every skin taken.

Tender No. 6.—The Alaska Commercial Company, by Louis Sloss, President.

Annual rental, 50,000 dollars, with deposit for equal amount in United States' bonds as security therefor; revenue tax of 2 dollars on each seal-skin taken and shipped, and a further sum of 4 dol 50 c. on the same; also 25 cents for every skin shipped for comfort and maintenance of inhabitant of Seal Islands in excess of wages while taking, salting, and shipping skins. Also to provide sixty comfortable frame dwelling-houses for inhabitants of St. Paul Island and forty for St. George, and keep them in good condition during term of lease. Also certain quantities of fuel and provisions for the inhabitants free of cost; establishment of canneries for the preservation of seal meat for inhabitants; maintenance of physician and furnishing of medical attendance and medicines free; maintenance of a school on each island; care of all widows and orphans; free transportation of natives to any point in Alaska where Company's vessels touch; furnish goods and supplies to natives at an advance not to exceed 25 per cent. of cost, wholesale price; improvement and repair of roadways on islands, also water supply, channels, and landings; transport of United States' mails free of cost to all points touched at by Company's steamers; establishment of regular mail service between Sitka, Kodiak, and Unalaska during the four summer months; establishment and maintenance of public hall and library on islands; will provide and maintain twenty frame dwelling-houses and inhabitants of Island of Unalaska; maintenance of school and school teacher; medical attendance for inhabitants of all islands of Aleutian chain; establishment of hospital at Unalaska, with proper complement of nurses and attendants, medicines, &c.; establishment and maintenance at Unalaska of school of

instruction in the useful trades for the natives; maintenance of supply of coal at Ounalaska, and will furnish United States' navy and revenue marine such quantities as may be required at cost price, in Ounalaska; wharf privileges, boats, &c., at Ounalaska free of charge to United States' vessels; and establishment and maintenance at Ounalaska a depôt of supplies, provisions, clothing, &c., for destitute inhabitants of Aleutian Isles, and to distribute same gratuitously at other points than Ounalaska.

In addition the Company offered, in lieu of all other proposals over and above the rental, royalty, revenue tax, and 25 cents per skin, the sum of 1 dol. 50 c. on every skin taken and shipped, should the Government prefer the arrangement in that way.

Tender No. 7.—*E. W. Clark, of Washington, D.C., representing a Syndicate.*

Annual rental, 50,000 dollars, and in addition revenue tax of 2 dollars and bonus of 3 dol. 50 c. on each skin shipped; also a bonus of 210,000 dollars, payable in annual instalments of 10,500 dollars; 55 cents per gallon for all seal oil shipped; payment to the inhabitants of the Seal Islands such compensation for their labour as the Treasury Department shall prescribe; also establishment of school and church and their maintenance during lease; and, further, to provide, free of charge, certain quantities of food, fuel, light, and clothing to the natives annually.

Tender No. 8.—*Atlantic and Pacific Company, by Charles H. Tenney, President.*

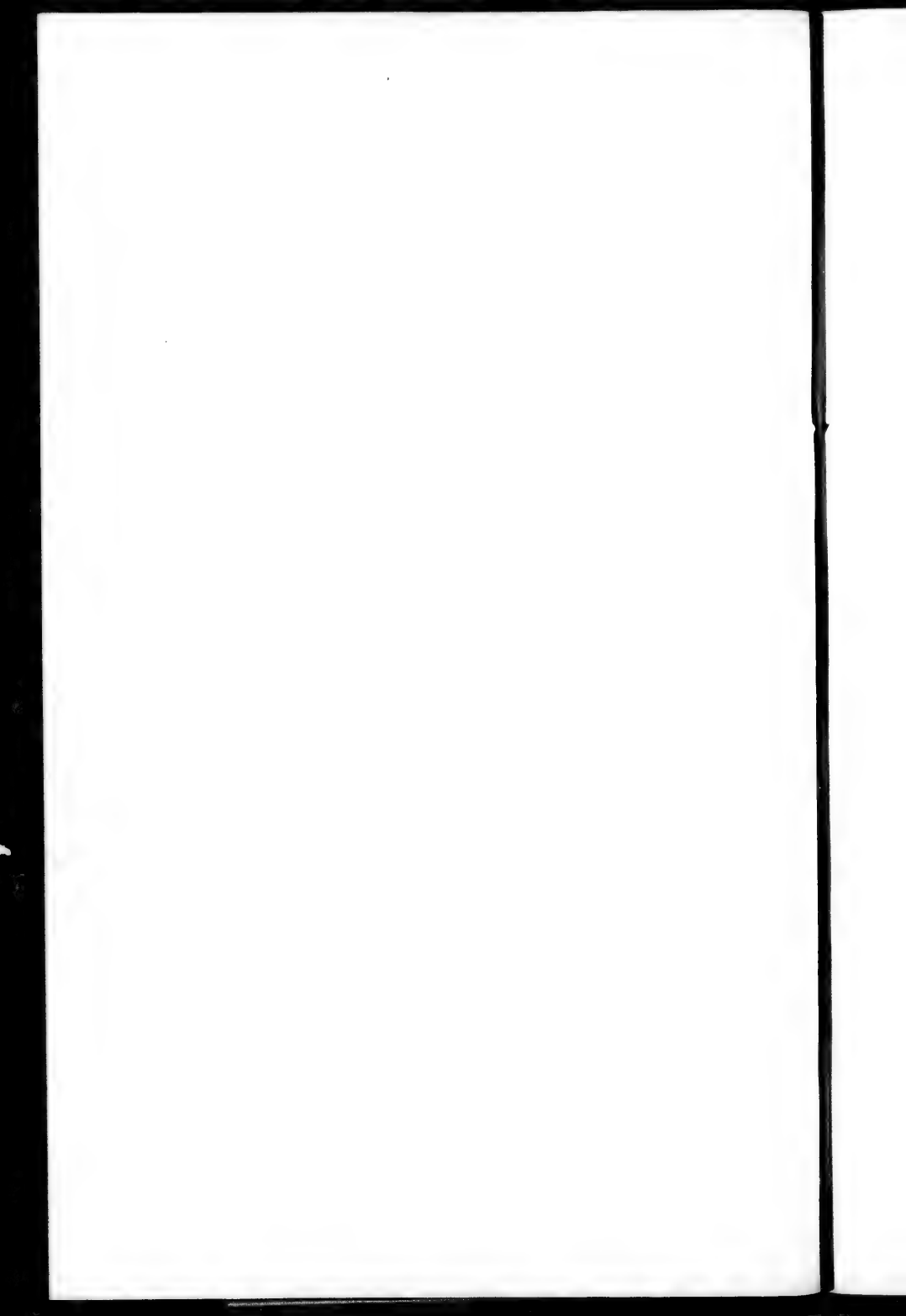
				Dols.	c.
Annual rental	..	..	..	55,000	00
Revenue tax	..	..	..	2	00 per skin.
Royalty..	..	..	..	6	12½ "

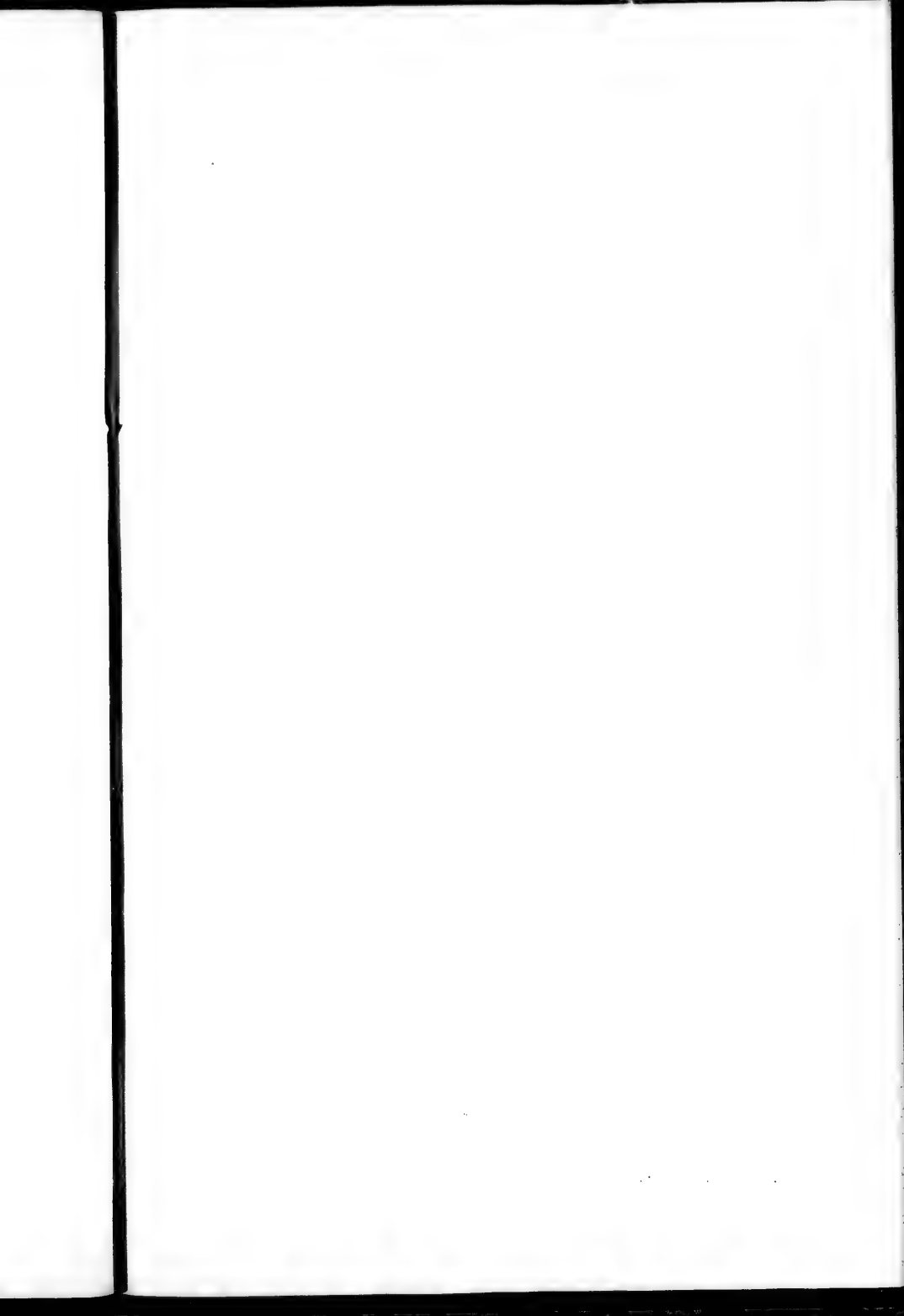
and in addition due care and treatment of natives, furnishing certain quantities of food, fuel, medicines, free of charge, and all other goods and merchandize at cost value, and will pay natives as they have been paid heretofore; maintenance of schools and teacher free, and employment of skilled and experienced officers.

Tender No. 9.—*The North American Commercial Company, Illinois, by H. L. Turner, President.*

				Dols.	c.
Annual rental	..	..	..	56,000	00
Revenue tax or duty	..	..	..	2	00 per skin.
Royalty..	..	..	..	5	11 "

and in addition due care of natives; establishment and maintenance of schools, medical attendance and medicines; such quantities of food, fuel, salt, &c., and payment to natives for services as Secretary of Treasury shall prescribe, and will furnish other goods and supplies at





prices not exceeding 20 per cent. excess of cost wholesale in San Francisco or other place of purchase; remunerative employment to other natives of Aleutian Islands, and will find market for their furs and peltries in certain contingency; establishment of other schools as Treasury Department may require; will defray cost of sending certain number of native youths to schools in United States for training as teachers; will extend all reasonable facilities for improvement of condition of natives; will preserve supply of surplus seal meat for maintenance of destitute natives on Aleutian Islands; will set apart each fifth year a sum of money equal to 10 per cent. of the excess over an average gross price of 15 dollars per skin for the promotion of education and general well-being of the natives of Alaska; establishment and maintenance of steam-launch patrol for use of Government officers on Seal Islands; guarantee that industry of dressing skins, &c., shall be opened to American labour and capital.

Tender No. 10.—*The North American Commercial Company, New York and San Francisco, by J. Liebes, President.*

			Dols. c.
Annual rental	..	..	55,200 00
Revenue tax	..	..	2 00 per skin.
Royalty	..	..	8 75 ..
Seal oil	..	..	0 50 per gallon.

The above offer on the understanding that not less than 100,000 seal-skins be permitted to be taken each and every year after the first year of the lease (if awarded).

If not permitted to take that number, alternate proposals were made.

Tender No. 11.—*The same Company as No. 10.*

			Dols. c.
Annual rental	..	..	60,000 00
Revenue tax	..	..	2 00 per skin.
Royalty	..	..	7 62½ ..

Seal oil 50 cents per gallon sold, and in addition, free of charge, food for natives, as Secretary of Treasury may direct, &c.; and encourage dressing, &c., of skins in America.

Tender No. 12.—*Another Tender of the same Company.*

			Dols. c.
Annual rental	..	..	57,100 00
Revenue tax	..	..	2 00 per skin.
Royalty	..	..	8 25 ..

The above tender made on the understanding, or with the provision, that the United States shall at all times guarantee and protect the Company in the exclusive enjoyment of the fur-seal fisheries in and within the waters of Alaska, known and designated as Behring Sea.

In addition, the Company tenders to furnish free food for natives, as Treasury Department may direct; also fuel, &c., and to encourage the dressing, dyeing, &c., of seal-skins within the United States.

*Head-quarters Military Division of the Pacific,
San Francisco, August 23, 1875.*

General O. O.
Howard's Report
on Alaska,
44th Cong.,
1st Sess., Ex.
Doc. 83, p. 152.

Respectfully forwarded to the Adjutant-General (through head-quarters of the army), in connection with General Howard's Report of the 30th June, 1875, referred to within, forwarded from these head-quarters the 21st August, 1875.

(Signed) J. M. SCHOFIELD,
Major-General, U.S.A.

*"A History of the Wrongs of Alaska: An Appeal to the
People and Press of America.*

"[Printed by order of the Anti-Monopoly Association of
the Pacific Coast, February 1875.]

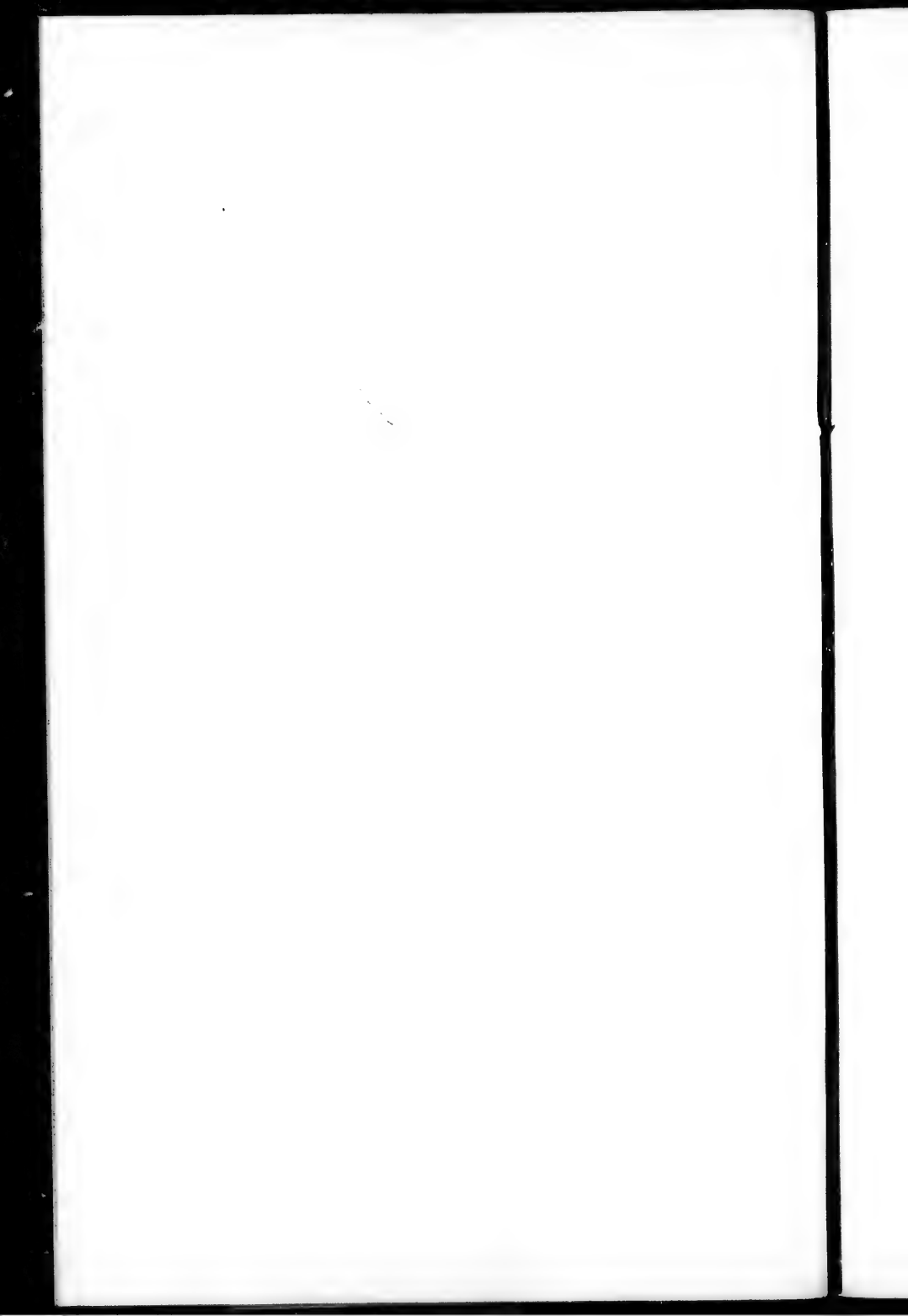
"An Appeal to the People and Press of America.

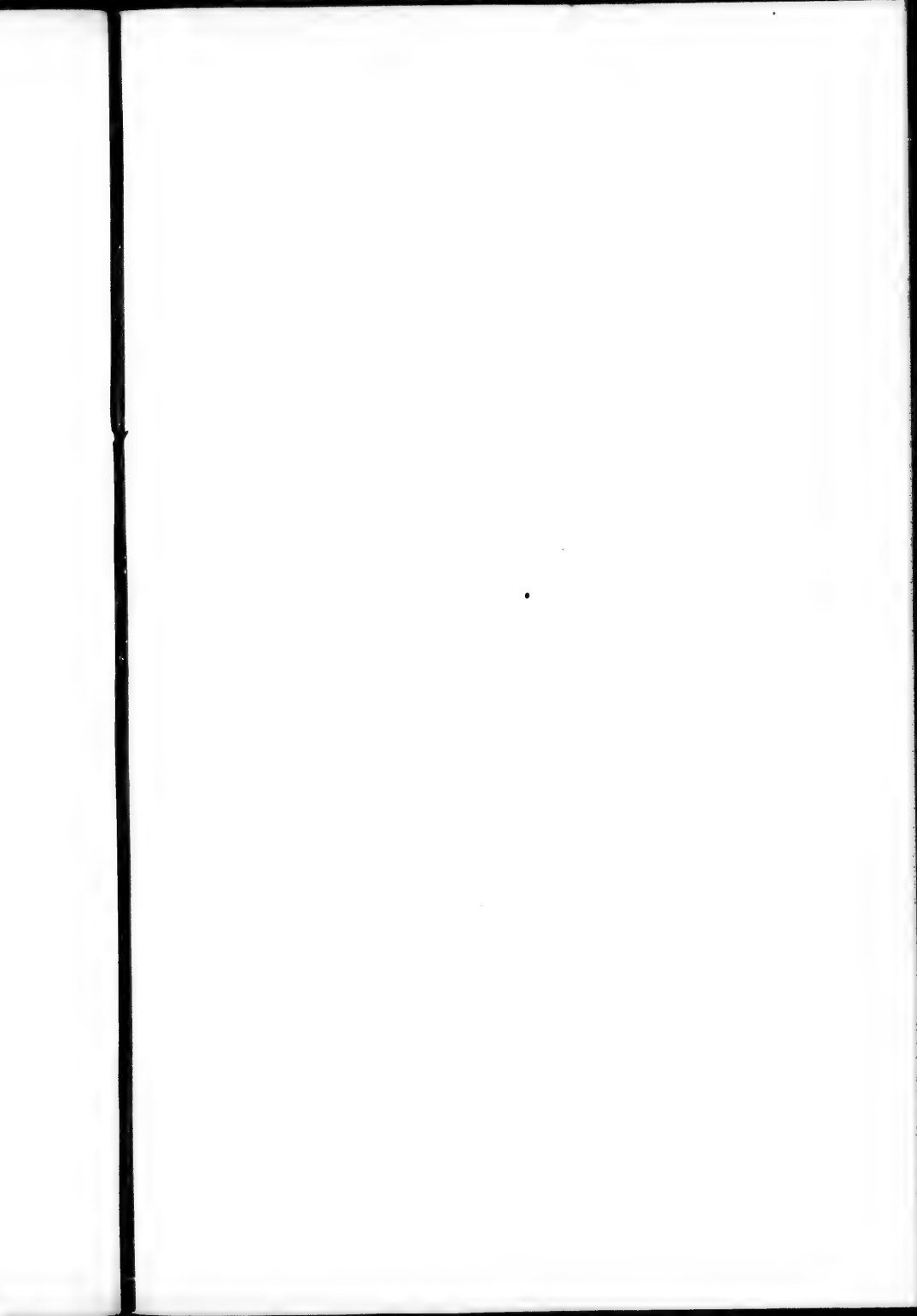
"San Francisco, January 1875.

"Inasmuch as the hope of receiving redress of the Government has hitherto been disappointed, and all appeals to the same which have been made during the last six years in behalf of the cause, in which we now raise our voice again, have been left unheeded, and a flagrant stain on the honour of our free country, which could be wiped out by one word of the Congress of the United States, is suffered to exist—a monument of the shame of America, we now address ourselves to the people, in the heart of which love of freedom, patriotism, and justice still live, and to its mighty voice and champion, the press, and appeal to them to take up this cause which ought to concern every citizen that loves his country. We speak of the serfdom of the civilized inhabitants of St. George and St. Paul Islands in Alaska, and of the fur-seal monopoly that has been granted by the Government.

"The wrong that has been done is so great, the violation of the principles of Republicanism and the Constitution of the United States so flagrant, and the corruption that has been connected with this disgraceful affair so glaring, that were the circumstances as well known throughout America as they are to people on the Pacific coast, it would have been struck down long ago, and would have shared the fate of the 'Crédit Mobilier.'

"We will therefore give briefly a history of the wrongs of Alaska, in which we will strictly adhere to the truth, avoid all exaggeration, and will be just to all: and in order that this history may be universally known, it will be sent in thousands of copies to all parts of the Union and to every leading paper in the United States.





" Although our space is limited, we must go a little into details to make the circumstances fully comprehensible, and to show how the ruin of Alaska was wrought.

" The Russo-American Company had at the time of the transfer the following property that had to be disposed of: A large number of ware, store, and dwelling-houses at Sitka and Kodiak, and all their forts and stations on the islands and on the mainland; an enormous stock of goods, representing a capital in proportion, and a fleet of steamers and sailing-vessels. All this was to be sold, and Prince Maksoutof, former Governor of Alaska and President of the Company, was intrusted with the business.

" He had not long to wait for a customer, for a number of capitalists of San Francisco had formed themselves into a Trading Company, and hastened to make overtures to the Russian Prince.

" The concern that thus sprang into existence was the firm of Hutchinson, Kohl, and Co.

" This Company proposed to buy the whole property as it stood, ships, stations, and goods, and their offer was eagerly accepted by Maksoutof. What the arrangements were, what price was paid, has never leaked out, but it is known that everything was sold at a ruinous figure; that Hutchinson, Kohl, and Co. cleared over 500,000 dollars on the transaction, and that Prince Maksoutof returned to Russia with a fortune. This, however, does not concern us or the public, but there was immediately inaugurated a system of suppression and high-handed outrages by Hutchinson, Kohl, and Co., with the assistance of this Russian Prince and by Federal officers, which deserves our closest attention, while a number of fraudulent transactions showed that the new and powerful, but entirely unprincipled, concern was capable of any action, no matter how lawless and contemptible, to approach the object which it was aiming at, which was nothing less than the *monopolization of the entire territory of Alaska.*

* * * *

" Making War upon Enterprise.

" While Hutchinson, Kohl, and Co. were thus ruling the Aleuts by false representations and tyrannical treatment, they also found means to severely annoy and often crush the other traders and Fur Companies that were also engaged in the territory. As the restless energies of most of these parties at once forbade all hope of driving them out of the field by fair means, unfair and corrupt ones were immediately resorted to, and it was principally through the assistance of the United States' revenue officers that this was accomplished. Of course, it is hard to prove that these officers were hired, but their favoritism was so undisguised, and the rewards which they received for their services so openly distributed, that there can be no doubt in this matter. The most zealous revenue officials, in the interest of Hutchinson, Kohl, and Co., were W. S. Dodge, Collector at Sitka; Samuel Falconer, Acting Collector at Sitka (afterwards in the employ of

Hutchinson, Kohl, and Co.); Mr. H. H. McIntyre, Special Agent of the Treasury Department (now General Agent of Hutchinson, Kohl, and Co., or the Alaska Commercial Company); William Kapus, Collector of Sitka (afterwards General Agent of Hutchinson, Kohl, and Co., or the Alaska Commercial Company); General Miller, Collector of San Francisco (now President of the Alaska Commercial Company), and several others.

* * *

"Favouritism shown to Hutchinson, Kohl, and Co.

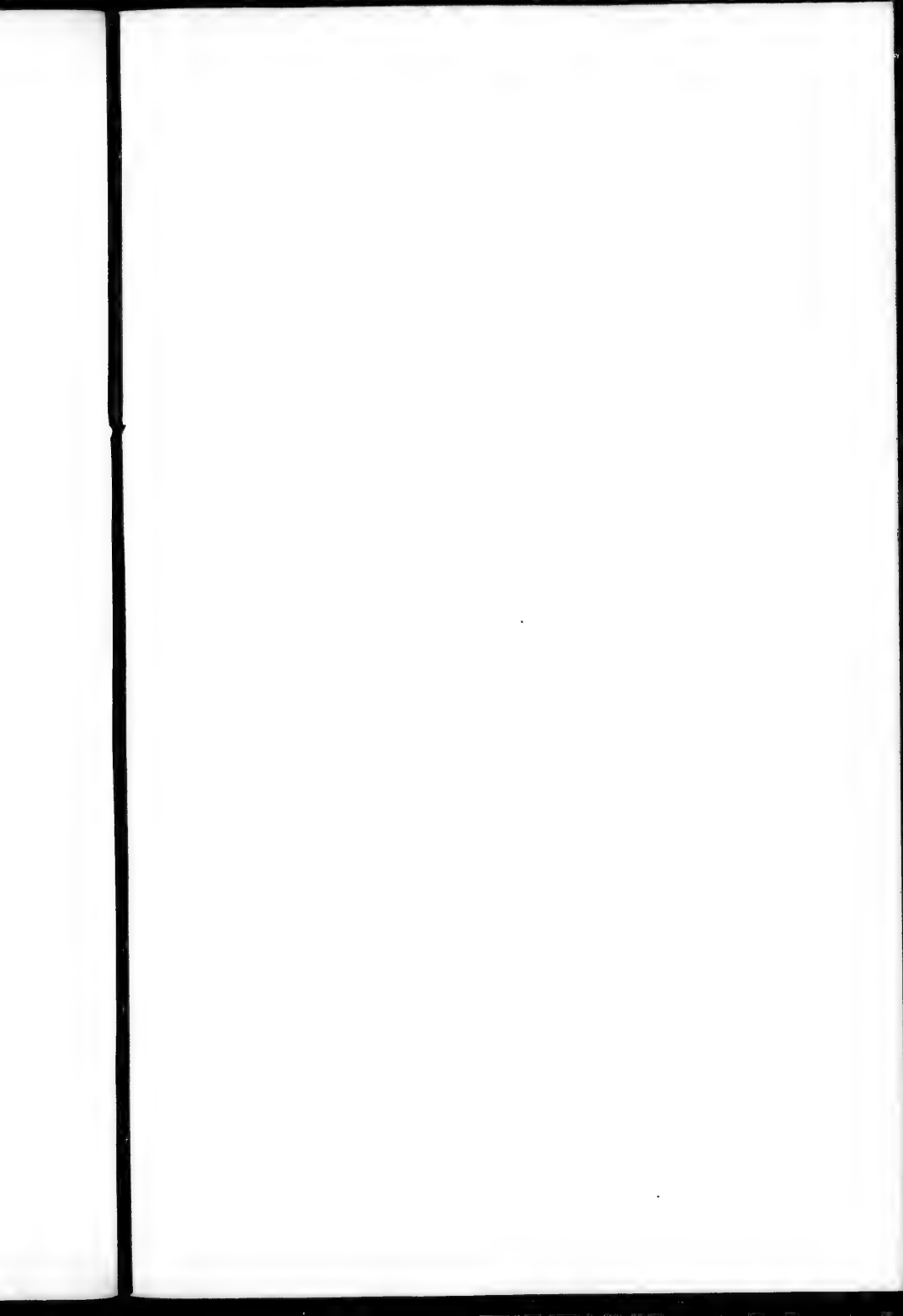
"While Hutchinson, Kohl, and Co.'s vessels left San Francisco without difficulty, came to Sitka, entered, cleared, and departed without hindrance, without search, and without delay, the other parties had to undergo a perfect ordeal of tribulations before they got out of the clutches of these Federal officers. At San Francisco the trouble generally commenced, and, thanks to Collector Miller's kind efforts, it was connected with nearly as much trouble to clear a vessel for Alaska as if she had been suspected of being a pirate intending to start on some filibustering expedition.

"This was, however, nothing compared with the annoyances that commenced when the ships arrived at Sitka. Here they were often detained for days and weeks, without a shadow of a cause; vessels of which there could not be the slightest doubt that they had, in every respect, complied with the revenue laws, were searched from deck to keelson; lighters were hauled alongside and every package was taken out, and then, if nothing else could be found against them, they were reluctantly allowed to reload their cargoes and depart. The more anxious these parties seemed to be to reach their trading grounds, the longer were they generally kept at Sitka, the confusing revenue regulations serving the officers as ample excuse for their arbitrary measures.

* * *

"The Fur-seal Islands.

"In the Behring Sea lie the two small islands, St. George and St. Paul, which are inhabited each by a community of Christians and fully civilized Creoles and Aleuts. Of all the wealth in furs that the whole immense territory of Alaska produces, these two islands furnish over half; for here assemble every spring the precious fur-seals in countless numbers, haul up in immense rookeries on the shore for breeding purposes, and remain till late in autumn. These seals are very easily taken, as it is only necessary to drive a number of them inland, for a mile or two, and there kill them with clubs. It was natural that, as soon as the territory was opened to the Americans, a number of Companies should immediately dispatch their ships to these mines of wealth, and in 1868 we find Taylor and Bendel, Williams and Havens, Parrot and Co., Captain Morgan, Hutchinson, Kohl, and Co., and others, having



stations on these islands, and energetically engaged in taking skins; and, strange as it may seem, in spite of the obstacles thrown into the way of the other parties, Hutchinson, Kohl, and Co. were among the last that arrived, which shows with what energy the former were possessed.

"This year, 1868, was a golden one for the inhabitants of St. George and St. Paul; the rival Companies strove for their favour; every man, woman, and half-grown child found the most profitable employment; and the coveted luxuries of the Americans, as clothing and dresses, groceries, implements of all kinds, ornaments, musical instruments, &c., which these parties furnished them, as well as the treatment which they received and the liberty which they enjoyed, made their life happy and comfortable.

" Attempting Special Legislation.

"But this was not to remain so long; the arch-enemies of Alaska were plotting to get these islands into their sole possession, and how well their deeply-laid plan succeeded has been shown by subsequent events. It became soon evident, already as early as 1868, that Hutchinson, Kohl, and Co. not only controlled the revenue officers in Alaska and the Collector of the Port of San Francisco (who is now the President of the Alaska Commercial Company), but that they had also gained a great influence at Washington; that deep games were being played in our national capital, and that the Executive and Treasury Departments, as well as Congress, were discriminating in favour of said concern.

"The most shrewd and wily members of the Company came to Washington, backed by unlimited funds, to gorge the greedy vultures that hover around our seat of Government, and immediately such shameless lobbying and intrigues were set in operation that even the old war-horses of the lobby were astounded. As if touched by magic, we see, suddenly, a number of Senators and members of the Administration assume the championship for Hutchinson, Kohl, and Co., and soon it was reported that the fur-seal islands were to be leased to them, to the exclusion of everybody else.

"When the first rumour of the intended lease of said islands and their inhabitants to a mercantile firm got abroad, it was not believed that such a violation of the letter of the law and the spirit of our free country would be attempted. People knew that they were living in the United States of America and not in Turkey, and that a President stood at the head of the nation and not the Shah of Persia. But when the infamous scheme assumed more form, and when Senator Cole, of California, actually introduced his villainous Bill in Congress, there arose an outcry against it so loud and distinct that any administration but that then at the helm at Washington would have heard and respected it.

" General Opposition.

"Not only was the matter daily discussed by the press and universally condemned, not only were the frauds, the

corruption, and the misrule in Alaskan affairs again and again exposed and denounced in the most severe language, but all classes of citizens, especially on the Pacific coast, raised their voice against this gigantic scheme. The Chambers of Commerce of San Francisco and several eastern cities held special sessions and protested against it, and these, as well as the most influential merchants of San Francisco, repeatedly memorialized President Grant and Congress, and appealed to their sense of justice, their patriotism, and their duty.

"Quotations taken from the Press and General Protests.

"We will quote a few of the expressions made in regard to this matter by California papers. In a long article headed 'Monopolizing Alaska,' in the 'Bulletin,' the 23rd January, 1869, we find:—

"'Hutchinson, Kohl, and Co. having, however, secured for themselves, under a Republican Government, all the privileges enjoyed by a Company that was one of the worst representatives of Russian serfdom,' &c.

"The 'Daily Herald' (29th January, 1869), in speaking of Senator Cole's Bill, says:—

"'The Bill is utterly indefensible.'

"The 'Daily Morning Call' (18th February, 1869), brings an article, headed 'Gigantic Scheme to monopolize the Fur-trade of Alaska,' from which we extract the following:—

"'The Bill introduced by Mr. Cole, in the Senate of the United States, to prevent the extermination of fur-bearing animals in Alaska, embodies a scheme for the wholesale appropriation of all the resources of that region by a handful of capitalists, such as cannot but excite public indignation.'

"The 'Bulletin' (25th February) says:—

"'Now, it is better that every fur-bearing seal in Alaska should be destroyed within the next twelve months than that such a monopoly as this, proposed in Congress, should ever be perpetuated in the new territory.'

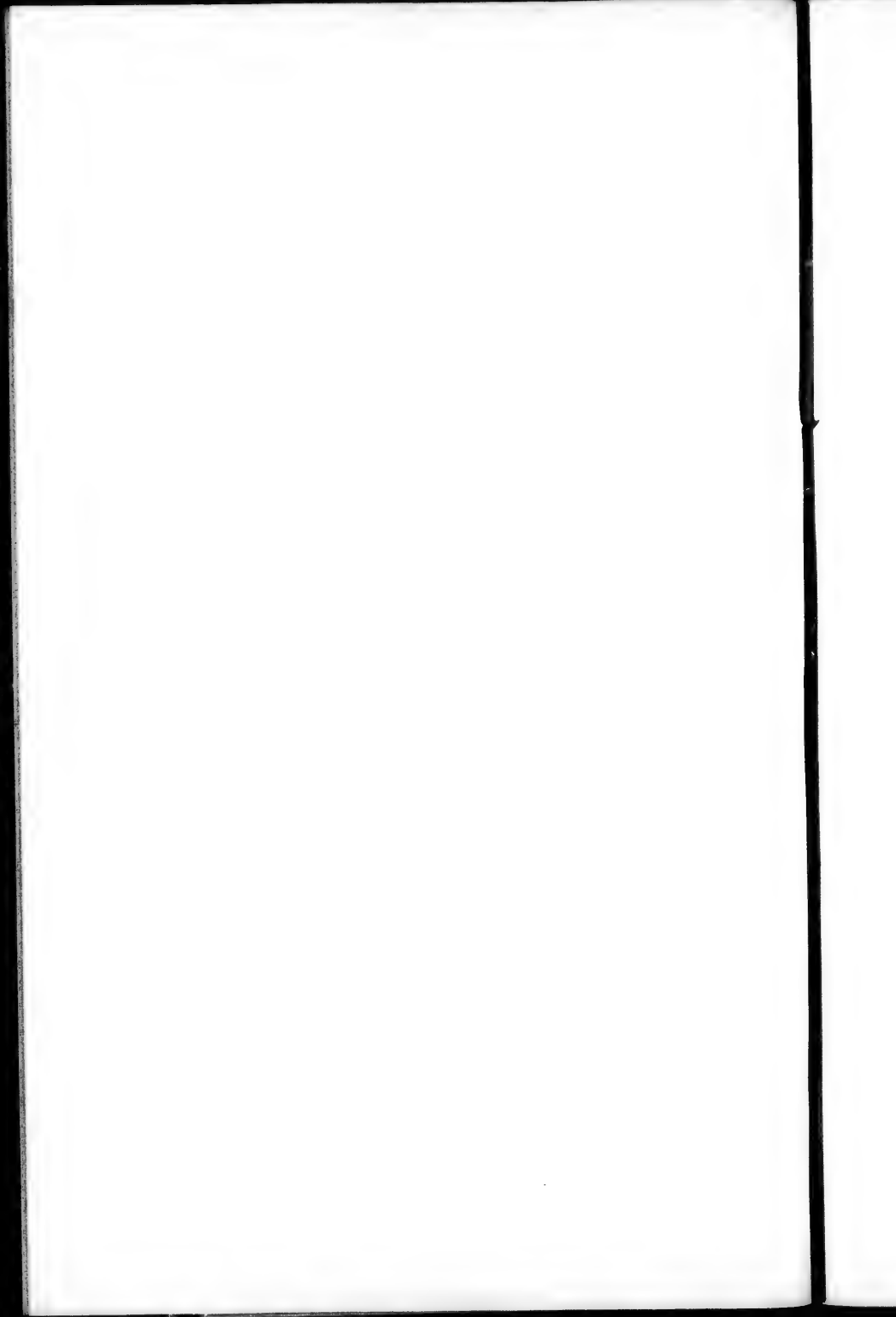
"From the 'Chronicle' (29th January, 1869), we quote:—

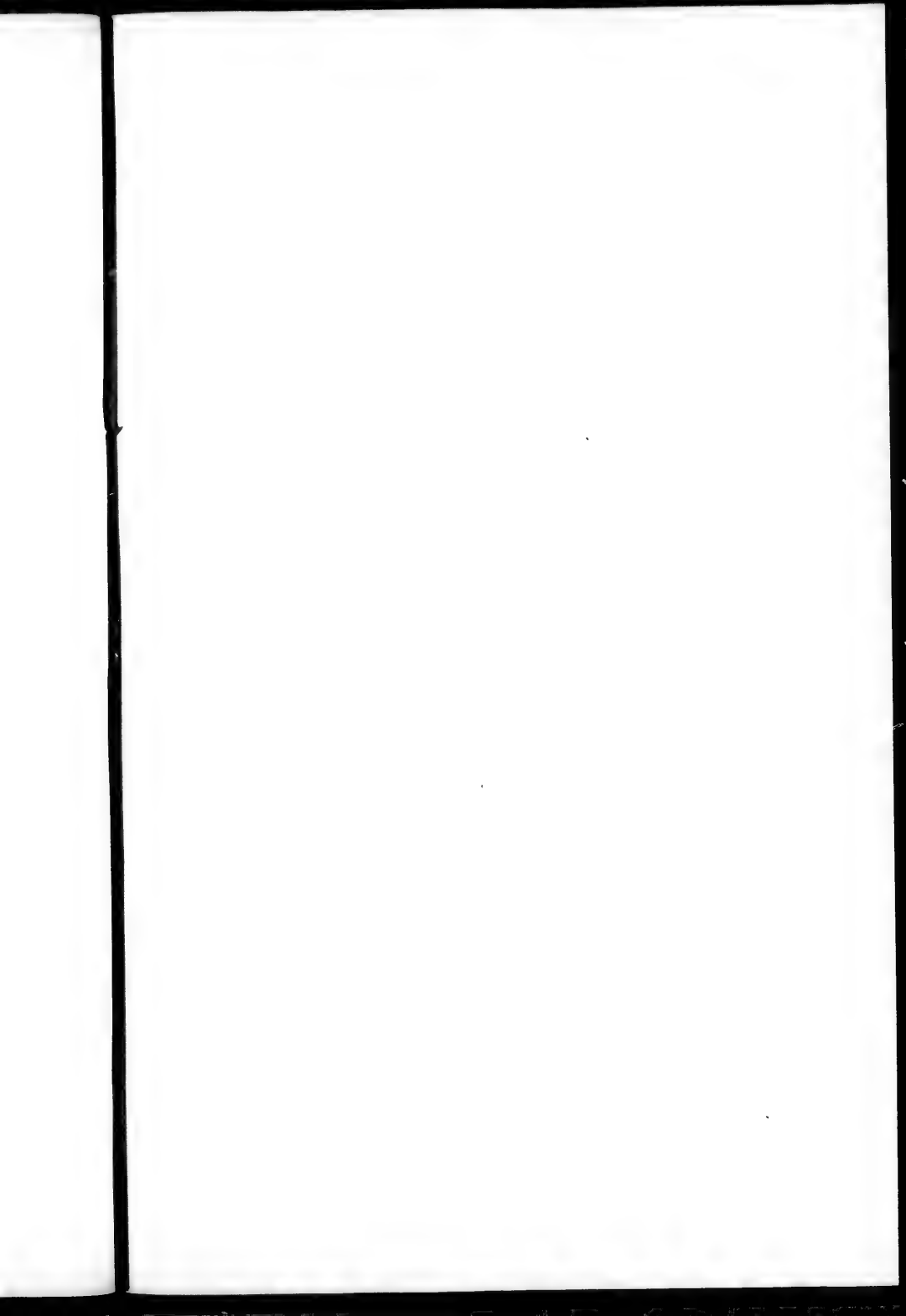
"'The merchants of San Francisco, whose interest would suffer severely by the successful passage of the "Monopoly Bill," have concluded to memorialize Congress against its passage, and we have been shown the document, which bears the signatures of many of our most prominent commercial firms.'

"The 'Alta California' (30th January, 1869), after having commented upon Hutchinson, Kohl, and Co.'s doings in Alaska, continues:—

"'But a bolder step became necessary to protect them against the restless enterprise of American citizens, and,

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accordingly, they have applied to the Congress of the United States for such a Charter.'

" And again, in the same article, we find :—

" 'A proposition so monstrous has never been made to any Congress.'

" And again :—

" 'These wretched Aleuts are handed over, body and soul, to the tender mercies of a single, grasping firm, to have and to hold in a worse than Russian serfdom, by the legitimate successors of the Imperial monopoly which has just been routed out of its stronghold of power by the (nominal) dawning of Republicanism in the hitherto benighted regions of the north.'

" And in a letter to the 'Bulletin,' dated Washington, the 26th March, 1869, we find :—

" 'For some time the pressure brought to bear on the House Committee to induce favourable action on the Senate Bill has been exceedingly heavy, and the efforts of the would-be monopolists have been of a nature so earnest and persistent as to excite surprise even among the *habitués* of the Capitol who were most accustomed to witness displays of desperate lobbying—surprise, however, which was dissipated when the magnitude of the coveted prize was placed in view.'

" While thus the press not only of California, but of the eastern States as well, condemned this monstrous scheme, the Chamber of Commerce and the most influential citizens of San Francisco took the most active steps to prevent the passage of the Bill. A Memorial to Congress was prepared, by San Francisco merchants (28th January, 1869), which reads as follows :—

" 'We, the undersigned merchants of the city of San Francisco, California, specially interested in the trade of Alaska, and also interested for the honour of our country in the estimation of the civilized world, and anxious to save the inhabitants of Alaska from a slavery inconsistent with our Federal Constitution, and opposed to a ruinous monopoly, destructive not only to the interests of trade, but obnoxious to our free institutions, do solemnly protest, in behalf not only of ourselves and of the Pacific coast, but of commerce, humanity, justice, and an enlightened public policy, against the passage of the Bill now before the Congress of the United States, and introduced by Senator Cole, of this State, entitled "An Act to prevent the Extirpation of Fur-bearing Animals in Alaska, and to protect the Inhabitants thereof."

" 'We, in common with all the citizens of the Pacific coast, feel a deep interest in the newly-acquired Territory of Alaska, and see in its great natural resources a legitimate source of wealth to enterprising merchants and traders, and we are unwilling that the whole trade of this

vast region should be monopolized by one firm, whose only claim to public consideration is the large fortune it has made in that territory, and its persistent and too successful endeavours to discourage and destroy competition.

"While the helpless inhabitants of Alaska are unable to memorialize your honourable body for themselves, and plead in their own behalf, we, as a matter of justice and humanity, protest in their name against the attempt now being made through this Bill to reduce them to a condition of vassalage to one Company, from whom we believe they have already suffered much.

"All of which is respectfully submitted.

"(Signed)

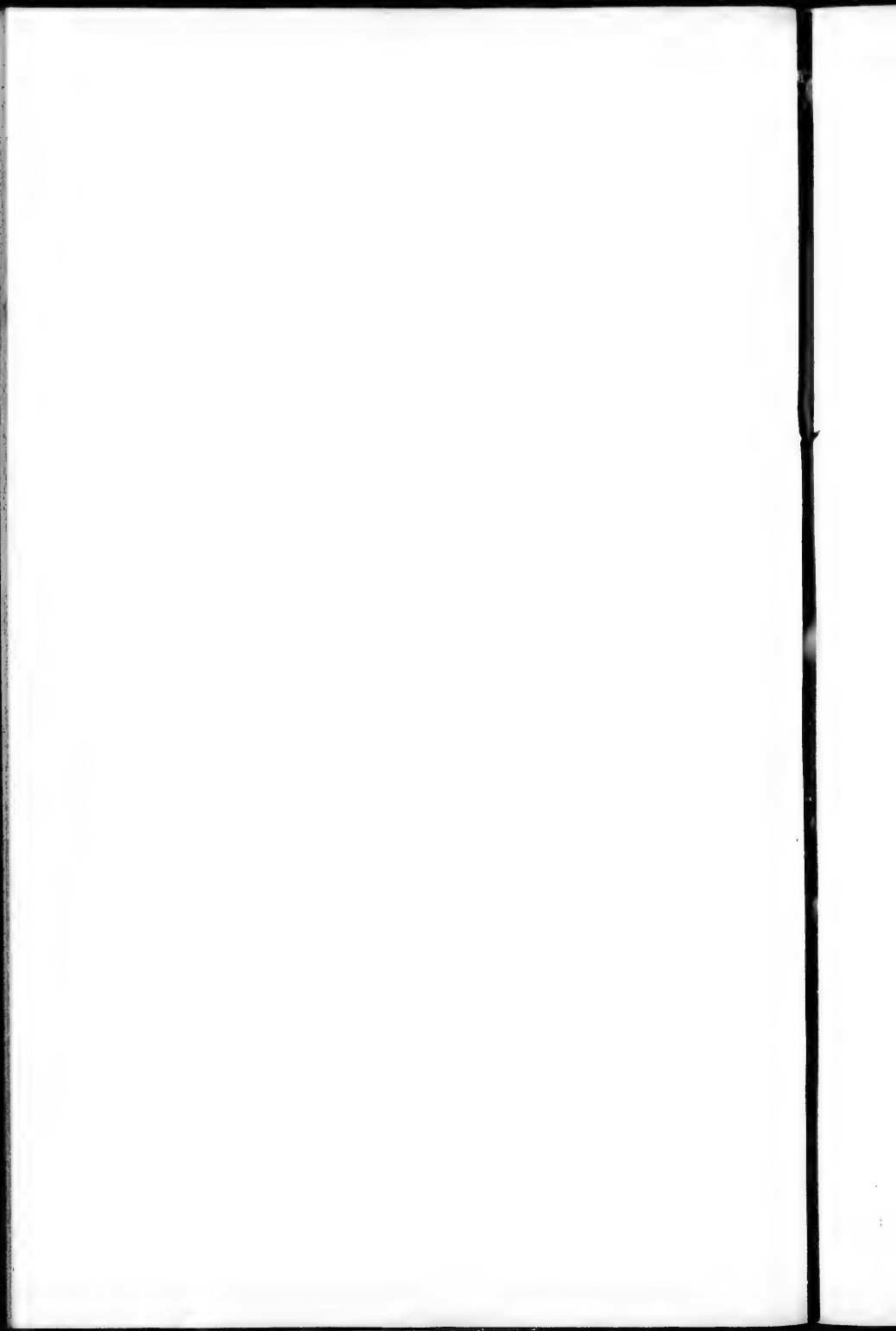
"Agapius Honcharenko, Taylor and Bendel, E. Tibbey, John Parrott, Louis B. Parrott, Alsop and Co., W. H. Ennis, H. Cohen, S. Martin, Langley, Crowell and Co., A. S. Rosenbaum and Co., L. E. Heck and Co., Fordham and Jennings, Wellman, Peck, and Co., Mitchler and Kessing, Irvine and Co., Wilmerding and Kellogg, A. Walker, L. N. Handy and Co., Pioneer American Fur Company, Smith and Kittredge, N. B. Edgerly and Co., Jacob Deith, Coffin and Patrick, Elisha Higgins, G. H. Collins, A. Crawford and Co., Charles Hare, Wright and Browne, L. W. Williams, W. B. Holcombe, George M. Josselyn, C. J. Hansen, Cox and Nichols, J. and J. Spruance, W. W. Dodge and Co., Lynde and Hough, George Hughes, George L. Debow, R. H. Waterman, L. H. Bonestell, B. H. Freeman, R. Pestein and Co., I. Shirpser, Samuel Adams, C. W. Hane, Wheelan and Co., Adolph Muller, F. H. Rosenbaum and Co., Frederic Clay, Dodge Bros. and Co., George W. Stewart and Co., James N. McCune, Fargo and Co., Josiah Stanford, L. L. Treadwell, Hobbs, Gilmore, and Co., H. Liebes and Co., Pacific Fur Emporium, T. Bearward, W. O. Gray, Marsh, Pillsbury, and Co., James R. Kelly, R. B. Swain and Co., E. A. Fargo.

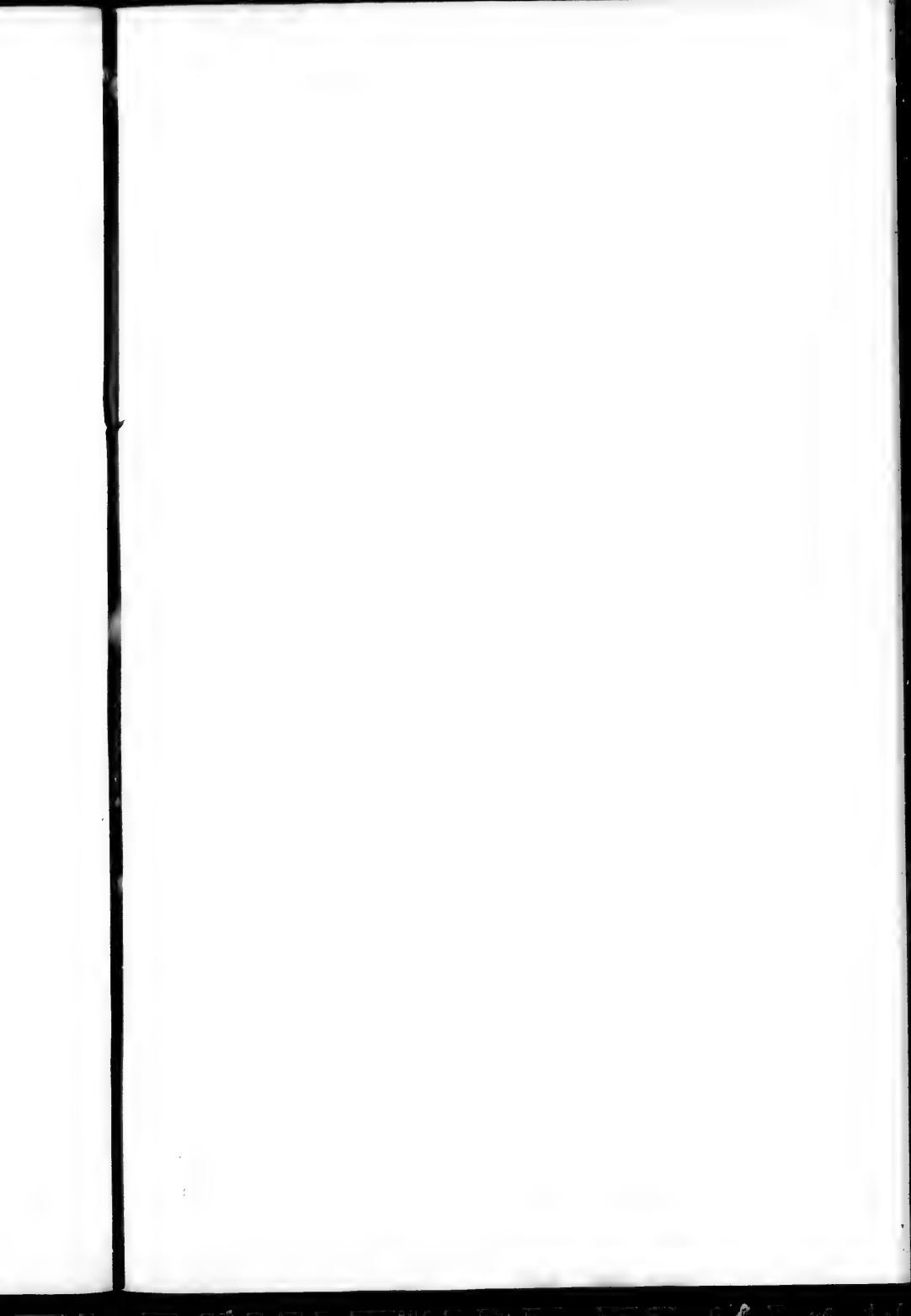
"*San Francisco, California,
January 28, 1869.*"

"Another Memorial, to President Grant, which was prepared in June, and very extensively signed, contains still more urgent language. It reads:—

"*Memorial to the President of the United States for the protection of the Rights and Interests of the People and Government of the United States in the Territory of Alaska, by Merchants and Citizens of the City of San Francisco, California.*

"Your petitioners, merchants, bankers, and business men of the city of San Francisco, engaged or deeply





interested in the trade of Alaska, and in its development, respectfully submit the following Memorial for the consideration of the Executive of the United States, trusting that it will be favourably regarded and acted upon.

"The condition of affairs in Alaska, from the time that territory was ceded to the United States, has been, and still continues to be, highly prejudicial to the rights of the citizens of the Pacific coast, and especially of this city, interested in its commerce, and, we deeply regret to say, disreputable to the United States' revenue officers in that territory, and unfortunate for the true interests of our Government therein.

"We will not weary you with lengthy details, but respectfully submit the following facts, of which we have been informed, and which we believe to be true. They are within the personal knowledge of some of your petitioners.

"The trade of Alaska, or, at least, that portion of it which relates to the killing of seals and the acquisition of their skins, has been, from the first, controlled by the firm of Hutchinson, Kohl, and Co., to the exclusion of other merchants and traders, who possess the same legal right in that territory.

"The said firm has been permitted to control the action of United States' revenue officers in Alaska, to secure its interests and break down and expel all competitors.

"Mr. Samuel Falconer, Special Deputy Collector at Sitka, is an agent of said firm. In confirmation of this statement we submit the following extract from the Alaska "Herald," published in this city, of the 1st May, 1869:—

"Hutchinson, Kohl, and Co. imagine that all Russian-America is their empire. A few weeks ago Mr. Falconer, the agent of this firm in Alaska, also deputy collector at Sitka, seized the schooners 'Alaska' and 'Lewis Perry,' not for the violation of the law, but to prevent these traders from doing business in their empire."

"Nearly every sutler attached to the United States' military posts in Alaska is an agent or employé of said firm. The six citizens permitted by law to remain upon the Islands of St. Paul and St. George, a United States' military reservation, are all connected with said firm. Other officers of the Federal Government in Alaska, if not in the actual employ of said firm, are at least attached to it in interest by corrupt means.

"Upon the Islands of St. George and St. Paul, said firm, through its agents in sutler-ships attached to the United States' military posts, has been permitted to monopolize the trade in the fur-seals, only found on said islands, to the exclusion of all other citizens.

"We respectfully submit that the monopoly of the trade of Alaska, possessed by the said firm, is in violation of our laws and of the spirit of our institutions, and is in gross violation and disregard of the right of your petitioners, in common with all other citizens of the United States in said territory, and that we feel deeply aggrieved thereby. We respectfully pray that such

measures may be taken by this Government as will put an end to said monopoly, and admit all other citizens of the United States to equal rights and participation in the trade of Alaska.

"Your petitioners would further respectfully recommend and pray, with respect to the fur-seal trade of Alaska, that laws be passed, and in the meantime Treasury Regulations be promulgated, prohibiting the killing of seals upon the Islands of St. George and St. Paul by any but natives of Alaska, and except from September to November of each year, and that only a certain number per annum on each island be killed; that it shall be unlawful to kill female seals, or pups under 1 year of age. That every seal-skin, before its sale, be exhibited to a United States' inspector, to be appointed on each of said islands for such purpose, who, if the same appears to have been killed in violation of law, shall confiscate the same for the public benefit, and fine or punish, in such manner as may be prescribed, the person exhibiting the same; that said skins be sold to traders in the presence of such inspectors, and that at the time of sale by the natives the purchaser thereof be required to pay such inspectors such Government tax as may be imposed for each skin, and, after such payment, the said skins shall be stamped or branded by such officers."

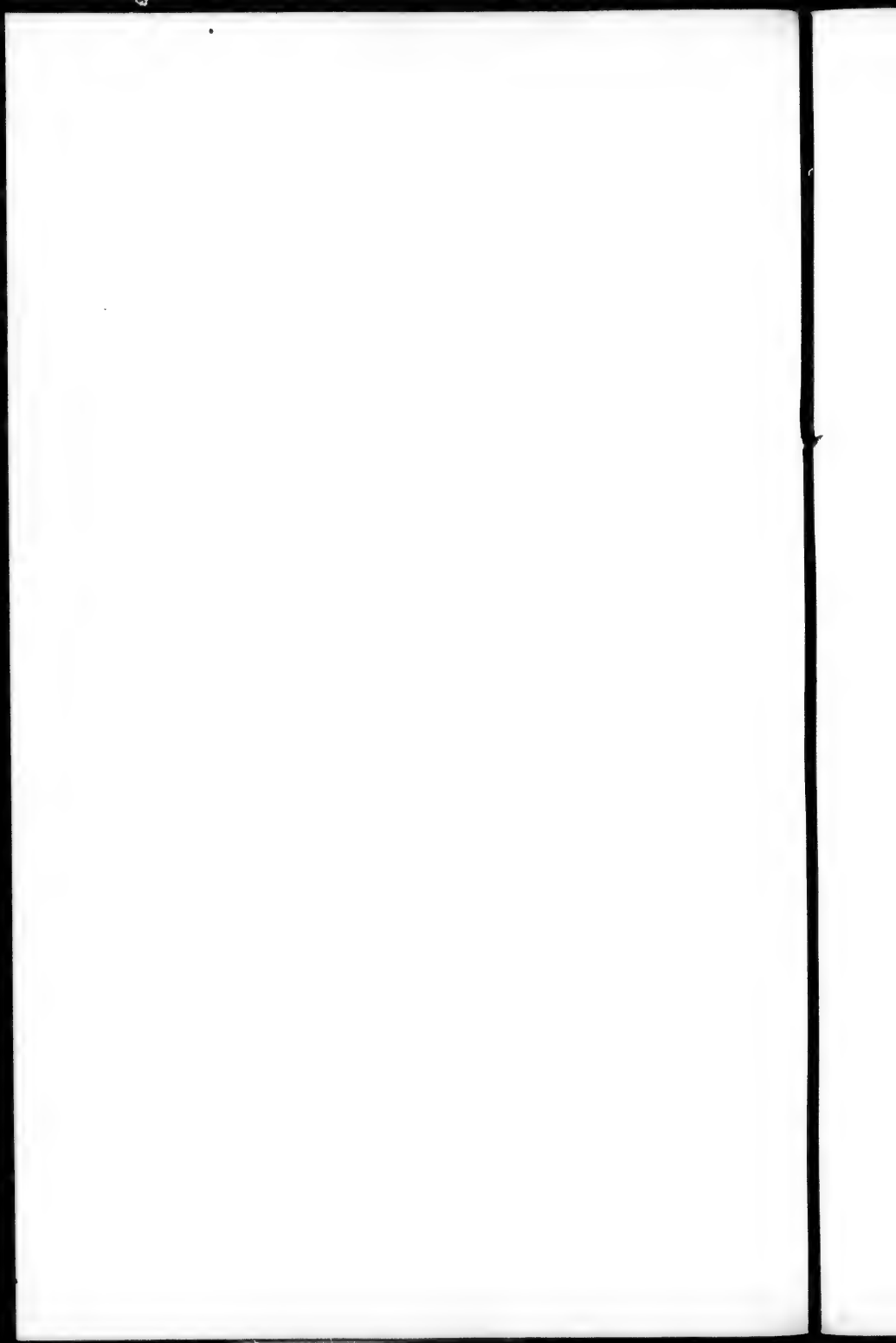
"The Chamber of Commerce, at regular and special sessions, discussed the matter most earnestly, and at a meeting held on the 22nd February, 1869, the President was instructed to telegraph to our Delegates in Congress, requesting them to unitedly use their influence to at least delay action upon the subject of a disposition of the fur-seal interest of Alaska.

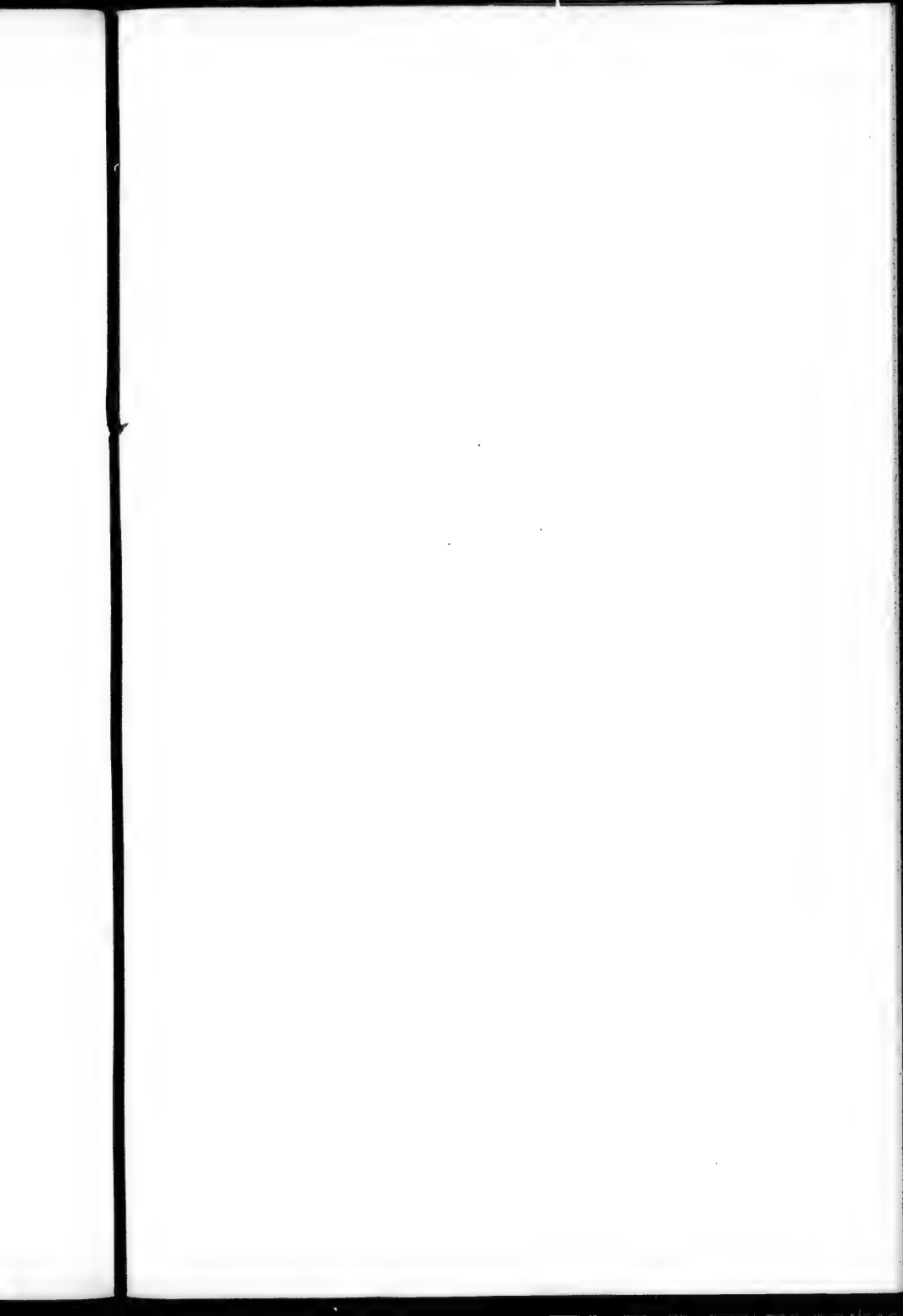
"At this meeting a Petition of Aleuts to the Chamber of Commerce of San Francisco was received, imploring the same for aid and protection against oppression by Hutchinson, Kohl, and Co.

"Soon after, a special meeting having been called for the purpose, the Chamber of Commerce memorialized Congress, asking equal rights for all parties, and at the same time protection to the fur-bearing animals; and a Bill in regard to Alaska was prepared by the former, and submitted to the latter, which, if it had been adopted, would have solved the problem to everybody's satisfaction.

"But amidst all this storm of indignation and protests, the President of the United States and the Congress, then in session, exhibited the utmost disregard for the wishes of the people so unmistakably pronounced.

"The interest of the whole Pacific coast, the clamour of the entire press, the loud voice of the public, and the plain letter of the Constitution of the United States were outweighed by the influence of one concern, that came prepared with unlimited funds, which it distributed with a lavish hand. It was coolly resolved that the principal wealth of Alaska should be handed over to Hutchinson, Kohl, and Co., and that the unfortunate Aleuts of St. Paul





and St. George should be delivered into their hands; but as this could not be done without Congress having regularly acted upon it, a plan was devised which would enable Hutchinson, Kohl, and Co. to enjoy, in the meantime, all the privileges which they coveted.

“Thus Hutchinson, Kohl, and Co.’s vessel was commissioned to do the Government’s work, and General Miller, who soon after resigned his Collectorship to become President of the Alaska Commercial Company, was intrusted with the selection of two trustworthy inspectors. Of course these orders were only a form; the real intention was that Hutchinson, Kohl, and Co. should take immediate possession of St. Paul and St. George, and when Colonel Frank W. Wicker, then Collector of Alaska, and Mr. Vincent Colyer visited the islands during 1869, as Special Agents of the Government, they found that instead of 3,000 seals altogether, over 60,000 seals had been killed on St. Paul alone; and when Colonel Wicker made a report of the fact to the Government, he was immediately relieved. The skins were of course appropriated by Hutchinson, Kohl, and Co.

“The Lease.”

“When the chances of Hutchinson, Kohl, and Co. of getting possession of the fur-seal islands became almost a certainty, not only Williams and Haven had joined them, but Collector Miller (who is a special friend and favourite of General Grant, and who had served the Company so well and his country so badly) resigned his Collectorship of the Port of San Francisco to become President of this enlarged concern, which now called itself ‘The Alaska Commercial Company.’ In the meantime, while the lobbying at Washington went bravely on, it had been decided that said islands were to be leased, but in order to preserve at least an appearance of fairness, not to the Alaska Commercial Company, but to the highest bidder; but that this was nothing else but a blind to satisfy and appease the public subsequent events have sufficiently proven.

“Congress passed an Act entitled:

“‘An Act to prevent the Extermination of Fur-bearing Animals in Alaska,’ approved the 1st July, 1870.

“The principal provisions of the Act are the following:—

“No more than 100,000 seals a-year are allowed to be killed on both islands together (75,000 seals on St. Paul Island and 25,000 on St. George Island), under pain of forfeiture of the lease.

“Terms of the lease twenty years from the 1st May, 1870. The yearly rental to be *no less* than 50,000 dollars per annum.

“The lease to be made immediately after the passage of the Act—to the best advantage of the United States—to proper and responsible parties, having due regard to the interest of the Government, the native inhabitants, the

parties heretofore engaged in the trade, and the preservation of the seal fisheries.

"The wording of the Act clearly indicates that the lease should go to the highest responsible bidder filling the conditions and qualifications required by the Act. This seems also to have been the opinion of Secretary Boutwell, but the Alaska Commercial Company insisted that the Lease Act was passed for their special benefit. They were so importunate that the Secretary of the Treasury felt induced to apply to the Attorney-General for advice.

"This application was made in a letter, under date of the 2nd July, 1870, to the purport that the lease should be awarded to the highest responsible bidder, to the best advantage of the United States, according to the wording of the Act.

"The Secretary of the Treasury then issued the following advertisement, dated the 8th July, 1870:—

"Advertisement.

"The Secretary of the Treasury will receive sealed proposals until 12 o'clock noon, Wednesday, the 20th July instant, for the exclusive right to take fur-seals upon the Islands St. Paul and St. George, Alaska, for the term of twenty years from the 1st day of May, 1870, agreeably to the provisions of an Act approved the 1st July, 1870, entitled, "An Act to prevent the Extermination of Fur-bearing Animals in Alaska."

"In addition to the specific terms prescribed in the Act, the successful bidder will be required to provide a suitable building for a public school on each island, and to pay the expense of maintaining a school therein for not less than eight months in each year, as may be required by the Secretary of the Treasury.

"Also to pay the natives of the islands for the labour performed by them, as may be necessary for their proper support, under regulations as may be prescribed by the Secretary of the Treasury."

"The remaining Alaska traders, though having strenuously worked against the Lease Act while it was pending, knew full well that the lease in such hands as those of the Alaska Company would be equivalent to a monopoly of the whole of Alaska territory, and also equivalent to their gradual ejection from it.

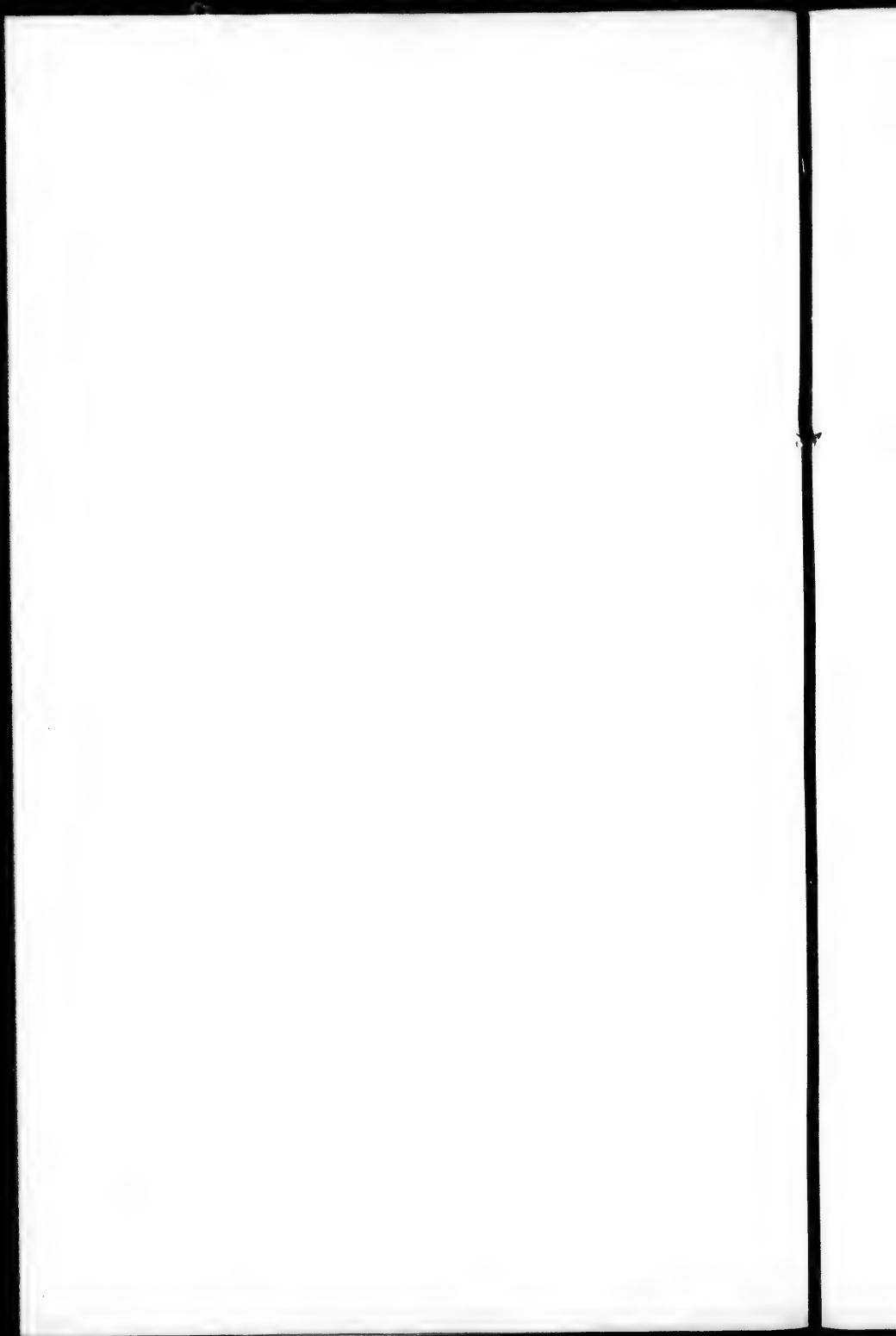
"They were consequently compelled, in order to save their investments, to compete for and bid on the lease.

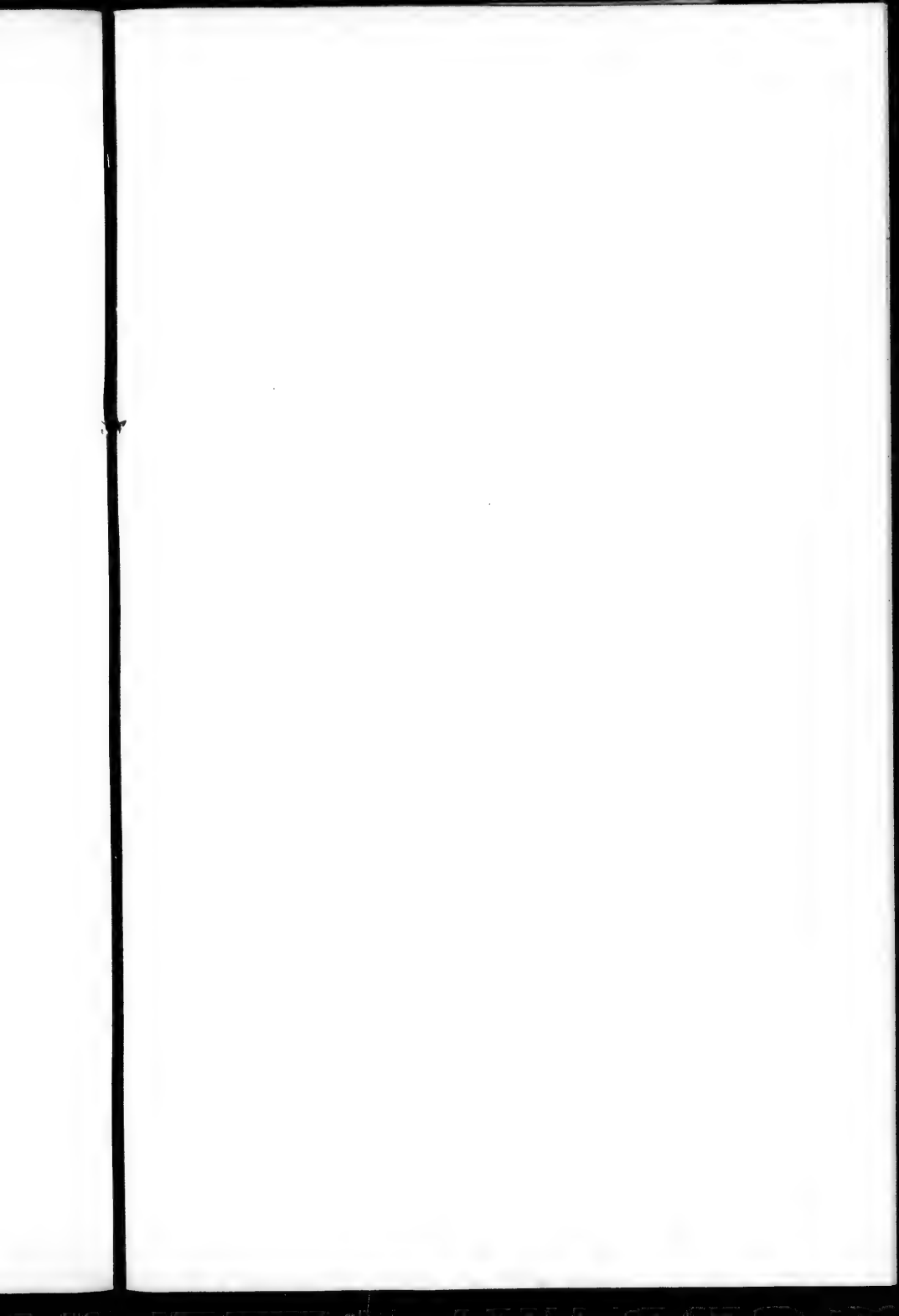
"The 20th day of July was the last day of receiving bids. On that last day the Treasury Department issued a singular Memorandum, which we subjoin:—

"Office of the Secretary, July 20, 1870.

"Memorandum in reference to Bids for the exclusive right to take Fur-seals upon the Islands St. Paul and St. George, read before the Persons present at the opening of the Bids at 12 o'clock noon, July 20, 1870:

"1. The successful bidder will be required to deposit security within three days, to the amount of 50,000 dollars





in lawful money or bonds of the United States, for the due execution of contracts, agreeably to "An Act to prevent the Extermination of Fur-bearing Animals in Alaska," approved 1st July, 1870.

"2. It being apparent from the language employed in the Act aforesaid that it was the intention of Congress to give a preference to the Alaska Commercial Company in the award of their contracts, I think it proper to state, before the bids are opened, that the contract will be awarded to the said Company if their proposals shall be not more than 10 per cent. below that of the highest bidder.

"3. No bid will be accepted unless made by a responsible party acquainted with the business or skilled in kindred pursuits to such an extent as to render it probable that the contract will be so executed as to secure the results contemplated by the lease."

"The Secretary then proceeded to open the bids, of which there were fourteen.

"The lowest bid was that of the Alaska Commercial Company, amounting to 65,000 dollars rental a-year, and the highest bid that of Louis Goldstone, for a combination of various San Francisco firms, amounting to a yearly rental of 227,500 dollars.

"The principal parties in the combination of firms for whom Goldstone had made the bids were the firm of Taylor and Bendel, one of the most respectable and prominent houses of San Francisco, that had been engaged in the Alaska trade from its opening, and having the additional advantage over the Alaska Commercial Company of prior occupation. The inquiries immediately instituted by the Government in Washington, through the agency of Custom-house Collector Phelps, of San Francisco, as to their standing and responsibility, were of a character in every way satisfactory.

"Notwithstanding this and the great discrepancy in the bids, the Alaska Commercial Company entered various protests, which were referred by Mr. Boutwell to the Attorney-General, then Mr. A. T. Akerman, who heard arguments on both sides, and, under date of the 29th July, decided in favour of Goldstone and associates.

"After the delivery of Mr. Akerman's opinion, it was everywhere taken for granted the lease would be awarded to Goldstone. Nobody had any doubt of it. All obstacles had been removed, and all protests done away with.

"On the 30th July, Mr. Goldstone consequently called at the Treasury Office for the lease, but to his utter astonishment and consternation he was informed that the lease had been awarded to the Alaska Commercial Company on the terms of his own (Goldstone's) bid. The communication was made by Acting Secretary William A. Richardson, whose face, in giving the information, was crimsoned with shame. Mr. Boutwell had secretly left for Massachusetts.

"State of the Inhabitants of the Fur-seal Islands.

"Although the Alaska Commercial Company has, ever since the wretched people of St. George and St. Paul were delivered into their hands, asserted that the latter are well satisfied with their condition, and that they are as happy as the day is long; yet the meagre news that, in spite of the vigilance of the Company, have reached San Francisco, tell a different tale, and they are so restricted by the terms of the lease that they are in nothing else but a state of bondage and slavery.

"The inhabitants of these islands are shut off from communication with the outer world like a colony of convicts, as no vessel is permitted to touch at, or no person allowed to land on, their soil except those belonging to the Alaska Commercial Company. They are not allowed to leave the island without permission. They are forced to accept 40 cents per skin, which are worth from 10 dollars to 20 dollars each at London, and they must pay for the commodities of life what the Alaska Commercial Company demands of them. And if we consider that they are brought into this condition by the Government of the United States, which has the sacred duty to protect the personal liberty of every individual within its domains, we cannot imagine a more flagrant case of the violation of the principles of Republicanism than that which here presents itself.

"Considering, furthermore, the course which Hutchinson, Kohl, and Co., which is now the Alaska Commercial Company, have ever pursued since their name has been known, how little they have respected what humanity, law, and justice demand, we are forced to believe that the condition of the inhabitants of St. George and St. Paul is not such as they represent.

* * * *

"The suppressed Petition.

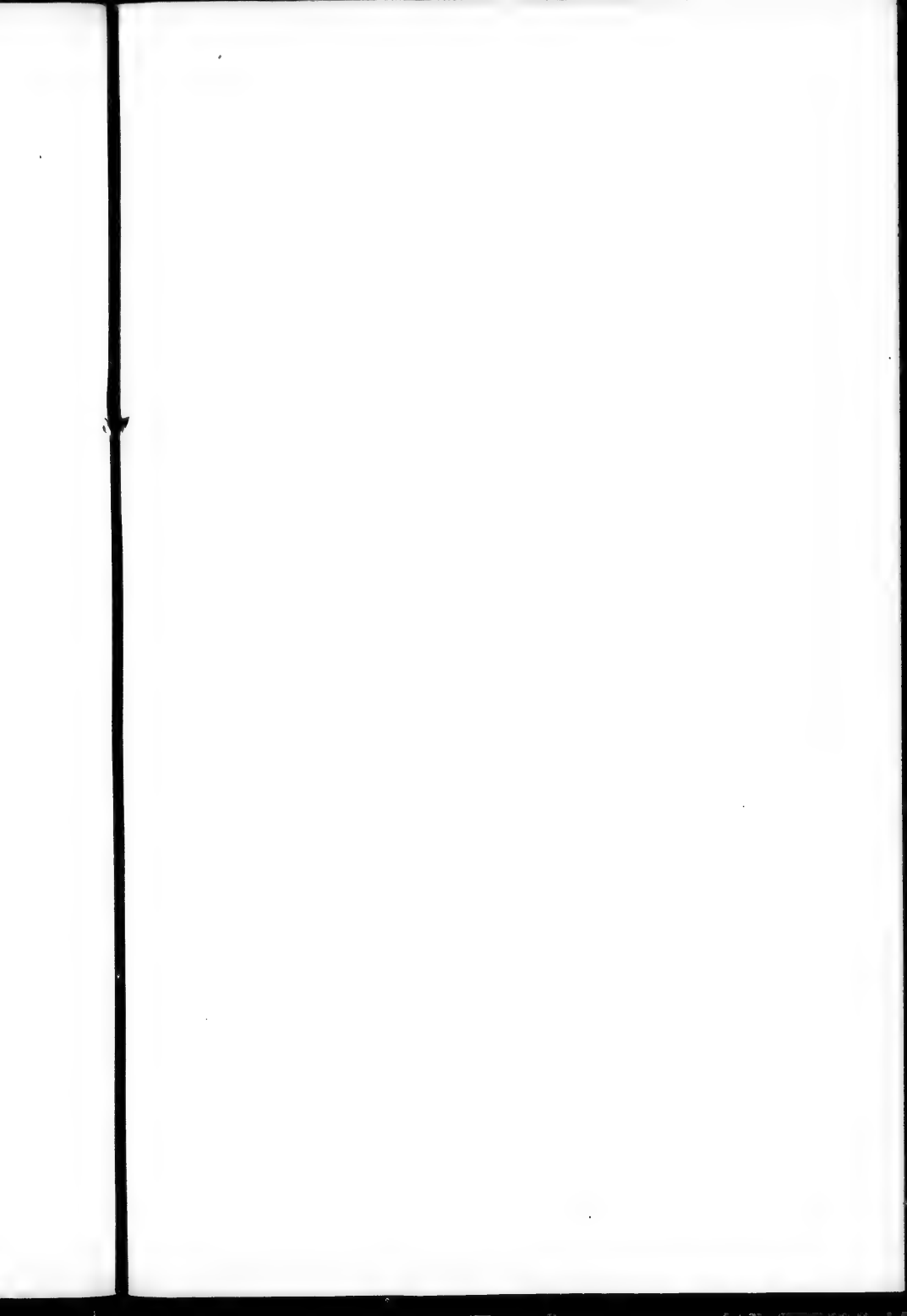
"We refer to the famous Petition of the inhabitants of St. George Island, which cannot be read without a feeling of regret, shame, and indignation, and the history of which, briefly given, is as follows:—

"When the fur-seal islands had been about a year in possession of the Alaska Commercial Company, there arrived in San Francisco a native of the Island of St. George, by the name of Peter Rupi, who brought to Agapius Honsharenko, editor of the 'Alaska Herald,' a paper published in San Francisco, a Petition, written in the Russian language, which had been drawn up by the same Aleuts who once before appealed to the Chamber of Commerce, and which had been signed by all the leading men of said islands.

"The following is the Petition translated into readable English:—

"The suppressed Petition.

"We, the Undersigned, natives of St. George Island, Alaska, and citizens of the United States, by virtue of



Treaty stipulations, feeling aggrieved at the mismanagement of the affairs of this territory, resulting in serious grievances to us, availed ourselves of the medium of a Petition to the General Government, in the hopes of accomplishing, through such means, such reforms in the management of Alaskan affairs as would tend to ameliorate the unhappy condition in which we found ourselves placed.

"This Petition was framed in 1869, and was intrusted to the care of our countryman, I. Archimandritoff, to be forwarded to the proper authorities at Washington for their action thereon in our relief, but, we are sorry to say, it never reached its destination. Again, we prepared the Petition, and this time, to assure its delivery to the authorities at Washington, we intrusted it to Mr. N. Buynitski, a United States' official from Washington, at the time present on the island. This officer received the Petition in 1870, and promised faithfully to present the same to the authorities at Washington; but on his return among us in the year 1871, we were again destined to disappointment, for, on our urgent inquiry as to what had been done with our Petition, we received no answer. We have, in view of these facts, been forced to the conclusion that our Petition to insure us the redress of our grievances, addressed to the supreme authority at Washington, has been suppressed.

"Now, therefore, we, the Undersigned, forward for publication, in the "Alaska Herald," a copy of the said suppressed Petition, in hopes that it may, by that means, reach the ear of the General Government, and the proper authorities thereof at Washington:—

" ' PETITION.

" *Saint George Island, Alaska,*

" *August 5, 1871.*

" ' We, the undersigned natives of Saint George Island, Alaska, and citizens of the United States, consider that we have been treated by the United States' Government without due consideration to our wants and necessities.

" ' That we can read and write, and are capable of holding correspondence with the Government.

" ' That Government, without consulting us, or understanding our situation, wants, and necessities, leased the island on which we live for twenty years, thereby virtually sentencing us to a twenty years' imprisonment.

" ' That we recognize by this act that we have been reduced to a species of slavery, and that we are compelled to labour and to receive therefor only 40 cents per fur-seal skin, or 50 cents per day for labour, when we can procure it, an amount entirely inadequate to our wants, and which leaves us dependents and paupers, checking our prosperity and impeding the progress of our civilization.

" ' That in consequence the education of our children, a privilege secured to other citizens of the United States, must be abandoned. Morally, religiously, socially, and

commercially, our destiny is in the hands of the lessees of the Government.

"We are the slaves of these lessees, and at their mercy.

"We are shut out from all intercourse with other portions of the Republic, and are, consequently, debarred from improvement by mutual correspondence with sister communities, and from learning through such intercourse how to advance in the common civilization of our country.

"Even merchants and traders are excluded from our shores by these lessees, and competition is thus cut off, and we are dependent only on the mercies of our masters. The employes of the Company (lessees of our island) often beat and violently assault us, threatening to drive every Aleut from the island, and that they have that power through this lease, obtained by them from Government at a cost of many thousand dollars. These employes are careless and indifferent about the fur-seal, our only resource and support for ourselves and families. The lessees are permitted to kill 25,000 per annum. When we bring them skins they select only the first-class skins, and order us to take the rest out of their sight. By this means, out of 100 skins, about 75 are purchased by them, and the rest, 25 skins, have to be thrown into the sea. The rejected skins which are cast into the sea and destroyed would find a ready sale with other outside traders, who are eager to purchase them; and thus are the fur-seals gradually disappearing; our labour is partially lost, and 25 per cent. of the wealth of our industry is lost to us because no one is allowed to visit our shores to trade with us but the lessees of our island, whom we are compelled to regard in the light of masters and even tyrants.

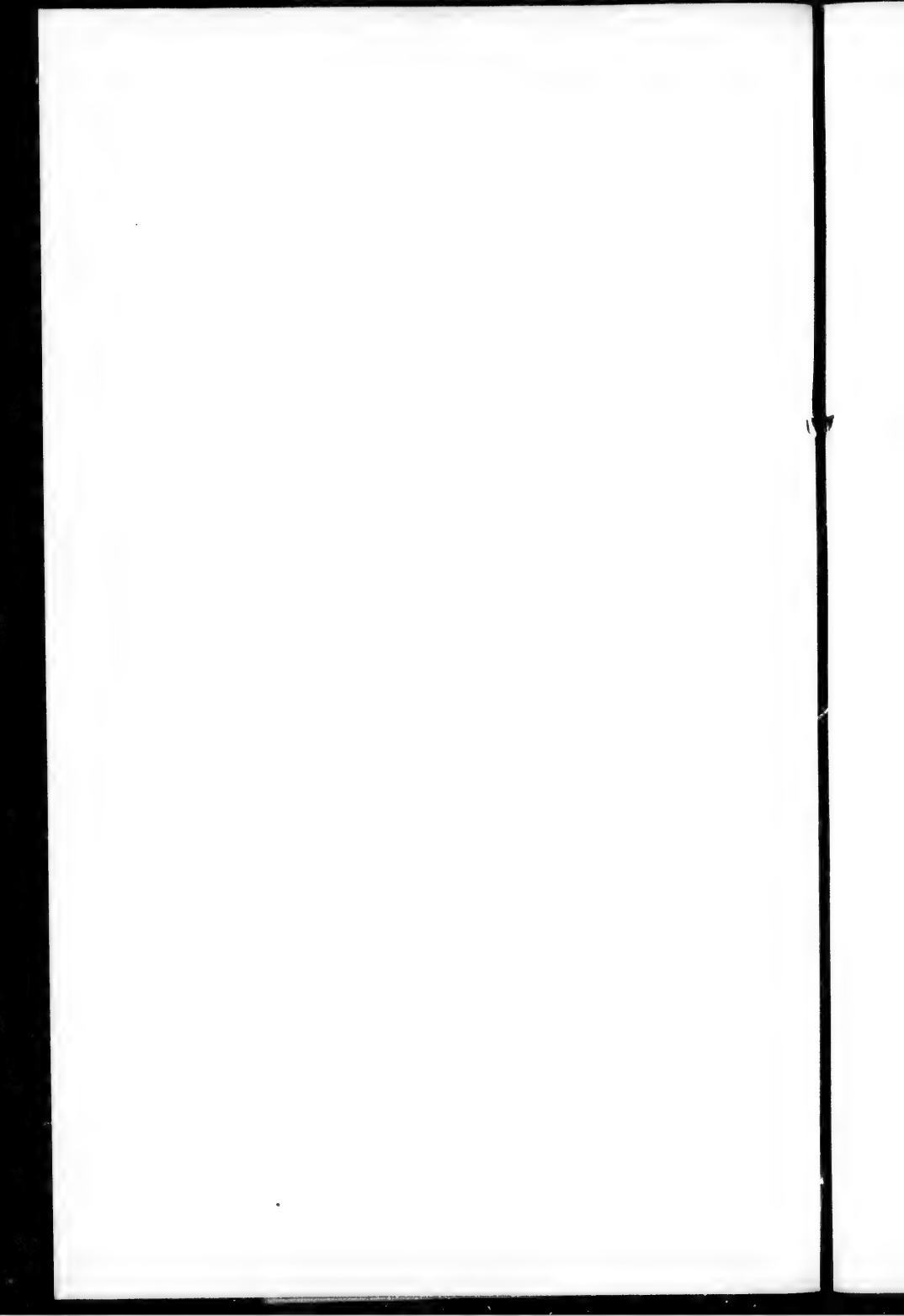
"In conclusion, we beg respectfully of the United States' Government, and of our fellow citizens all over the Republic, to regard us not as wild Indians—we are not such—but as fellow-citizens struggling to advance in civilization, and to become worthy to be esteemed as fellow-citizens of the Republic.

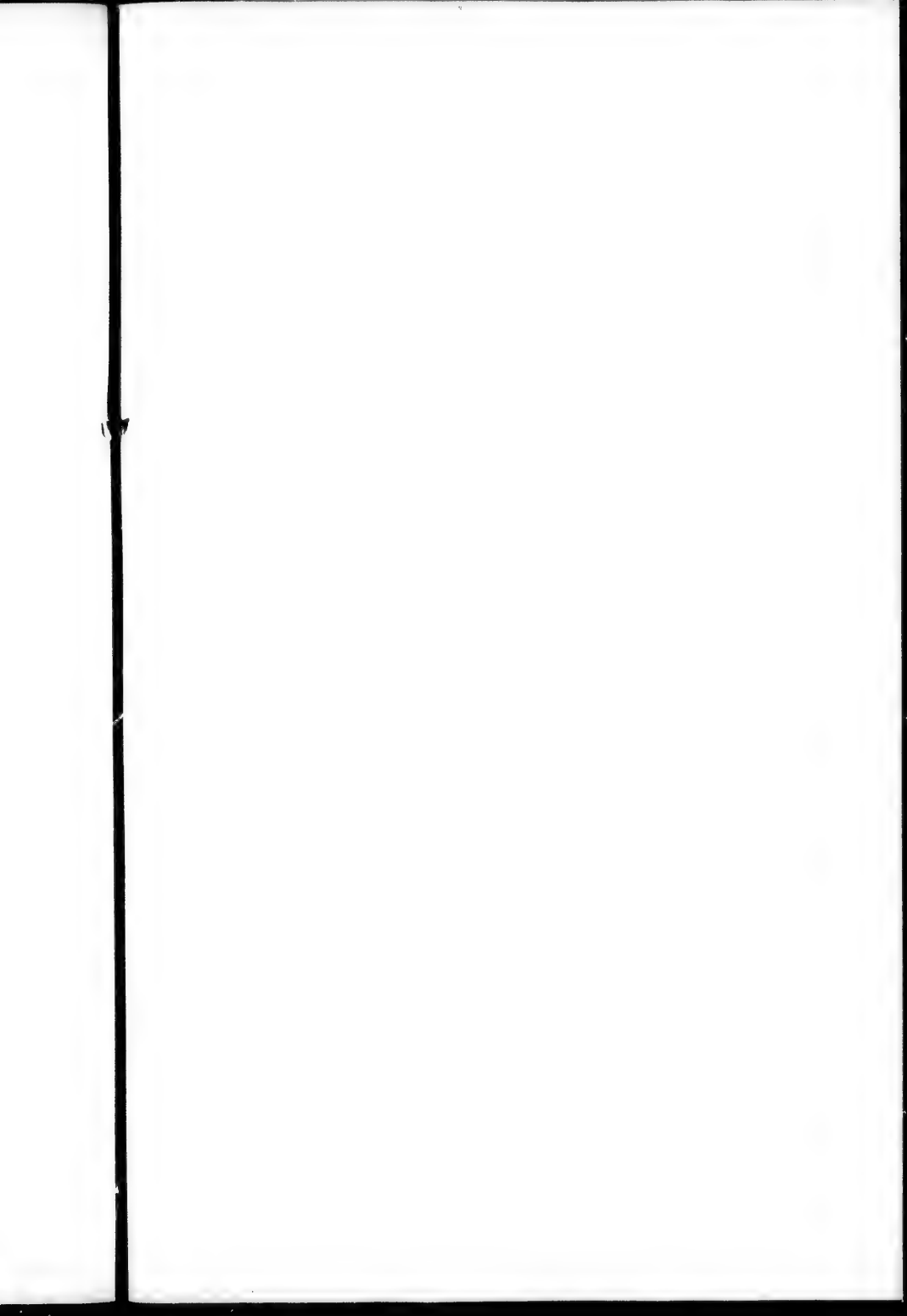
"(Signed)

"Peter Rezantzow, Andronic Rezantzow, Niciphor Veculow, Peter Rupi, Alexis Shvetcow, Egor Kolechow, Ivan Philemonow, Sabba Kolechow, Job Philemonow, Zachar Ustugow, Platon Veculow, Ciprian Mercuriew, Peter Chlebow, Ustin Shvetcow, Semen Philemonow, Alexis Galamin, Gabriel Galamin, Boris Galamin, Alexis Ustugow, Barpholomeus Malovanski, Ivan Shein, Ivan Popoff, Alexander Ustugow, Sebastien Mercuriew, Neophit Shvetcow, Joseph Shvetcow, Nicholas Ustogow, Phoca Shein, Ivan Akupski."

"This Petition created a sensation in California as well as in the East, and was a bomb-shell to the Alaska Commercial Company.

"Again did the press raise its voice in behalf of these





unfortunate Aleuts; again was the unconstitutionality of the lease held up before the public, and again were justice and fairness demanded. But once more did the storm of indignation break upon the stoical front that the Government presented; the Alaska Commercial Company declared the Petition a fabrication, and probably spent another cool 50,000 dollars where it did most good, and that ended the matter. The Government did not take the slightest notice of the petition, and the Alaska Commercial Company has been careful that not another one should leave the island again.

"We exclaim, again, alas, Alaska!

"One more Effort.

"It is now evident, beyond all doubt, that although the General Government was fully acquainted with every detail of this disgraceful affair, no redress could be obtained at Washington; still, one more effort was made by the indignant citizens of San Francisco, and in February 1872 the Senate of the State of California was memorialized and implored to use its influence with the Government of the United States in behalf of this cause. We give here the Memorial:—

*"Memorial to the Honorable the Senate and the House
"of Representatives of the State of California.*

"The Memorial of the Undersigned, citizens of the United States and merchants and traders of the city of San Francisco, most respectfully represents:—

• • • • •
"And whereas by the terms of said contract, or lease, Congress has surrendered to the said Company, for a period of twenty years, the entire resources of the said islands, together with the inhabitants thereof, in their foreign intercourse and the entire regulation of the trade therewith, and has invested the said Company with such arbitrary privileges and powers as to virtually give to said Company a monopoly of the entire resources and commercial interests of the said territory, thereby shutting in the inhabitants thereof from all intercourse, through the medium of commerce, with their fellow-citizens elsewhere in the Union except through the agents and employes of the said monopoly;

"And whereas, by the terms of the said contract or lease, the Congress of the United States has abdicated in favour of said monopoly that portion of the sovereign power of the Government of the United States which can rightfully be exercised by Congress alone;

"And whereas the executive branch of the General Government, through its officers and agents, thereto prompted by like undue influences and corrupt practices, and means, has been led to sustain and support the said monopoly in the illegal exercise of its unconstitutional privileges and powers, in that—

"It has surrendered itself through its revenue officers in Alaska to the control of this monopoly;

"It has permitted Federal officers to act as agents of the said monopoly;

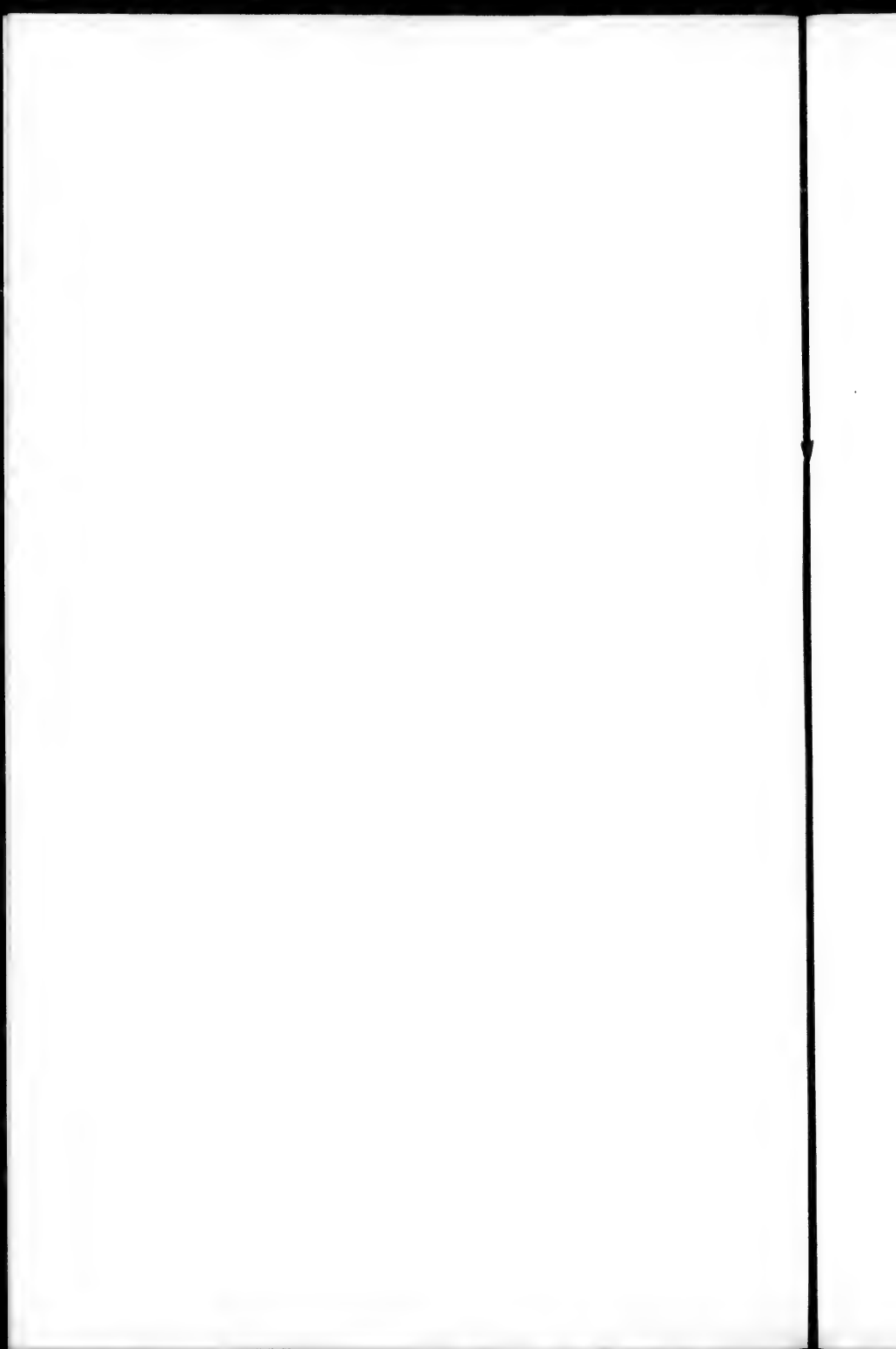
"It has permitted Federal officers to become stockholders in said monopoly;

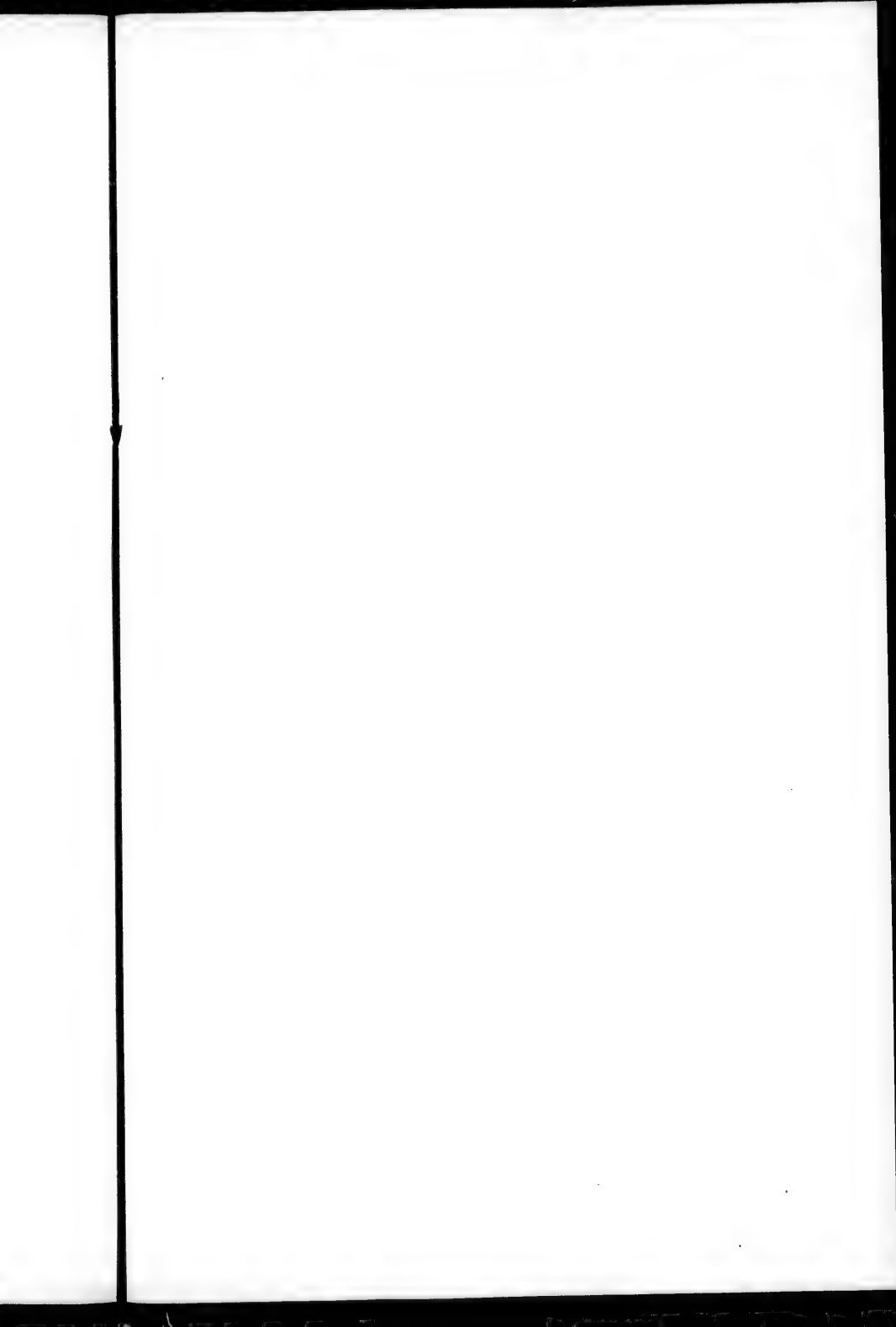
"And whereas the Executive branch of the General Government, by the acts aforesaid and otherwise, has abdicated that portion of the sovereign power and authority which can rightfully be exercised by the Executive of the Government alone, acting through agents and officers exclusively devoted to the duties of their respective offices, in favour of the agents of said monopoly, claiming to act under the double capacity of agents for both the Government and said monopoly;

"Now, therefore, we, the Undersigned, being personally cognizant of the above facts, and sincere in the deductions derived therefrom, would, in view thereof, most respectfully petition your honourable bodies in joint convention, by concurrent resolution, address the Congress of the United States, at its present session, petitioning that honourable body, in the interests of your memorialists, and of the merchants and traders and commerce of San Francisco, the Pacific coast, and the entire nation, and in the interests of humanity and progress, of right and justice, and in vindication of the integrity of our institutions, which denounce all efforts at the enthrallment of the people or any portion thereof, to annul the said illegal and unconstitutional contract or lease above mentioned, and to open up Alaska to free and unrestricted commercial intercourse, subject only to such wise and wholesome general regulations of trade as will act and be binding upon all alike; and as a preliminary to such a step, praying that a Commission be appointed by Congress at its present session to investigate the evils which attend the management of Alaskan affairs, and the infractions of the terms of the said contract or lease by the said Alaska Commercial Company, said Commission to be composed in whole or in part of merchants of San Francisco.

"(Signed)

"A. Crawford and Co., Johnson, Nickerson and Veasey, Lynde and Hough, Morgan and Co., Thomas J. Foster, John H. Carmany and Co., Sherwood, Buckley and Co., Thomas Burden, J. Sturtevant, J. Marks, S. Folpe, Thomas W. McCullum, A. C. Nichols and Co., H. Horst, Starr and Little, James R. Finlayson, D. Beadle, Charles Hare, S. M. Holderness, David Shirpaer, Sam P. Holden, M. J. Kelly, Charles J. Janson, Royal Fisk, And. Welch, A. C. Land, Jacob Schrieber, W. A. Hughes, Wm. H. Rouse, J. M. Hickson, A. W. White and Co., Hill, Slopt and Co., A. Pallies, J. H. Harn, James Cormack, jr., W. J. Lory, C. F. Bassett, Adam





Booth and Co., S. Levy and Co., J. Green, John Laws, Duff and Co., Lowry and Wightman, Wm. Kibbe Benjamin, S. M. Henry and Co., P. B. Smith, H. F. Baker, Heywood and Hendley, Dakin and Libbey, Brous and Perkins, Littlefield, Webb and Co., H. K. Cummings, A. A. Haseltine, J. W. Wolf, George E. Cole, J. Scott, James Rope, D. B. Stewart, C. McCann, R. D. Thilpoll, L. E. Noowan, R. E. Haseltine, C. R. Jones, G. S. Rogers, John Bills, William Chipman, William Fullard, T. J. Parker, W. Robbins, Geo. E. P. Hunt, Francis P. Devine, B. H. Madison, Geo. W. Boyd, Wm. de Witt, John C. Gunn, Henry Dneyer, Henry Anderson, L. S. Allen, George Charles Lester, H. Heine, John McPherson, R. D. Rhafon, G. D. Plato, John H. Druhe, O. J. Preston, James McLoughlin, H. Applebee, Peter Muhelson, Thomas Bewick, and 300 others.'

"Now, what was the fate of this Memorial? It was presented to the California Legislature by Senator Perkins on the 9th February, 1872, and referred to the Committee on Federal Relations. General Miller immediately interviewed this Committee, and pronounced the statements set forth in said Memorial as false, and his word outweighed the signatures of hundreds of the best citizens of San Francisco; and said honest Committee refused to forward the Memorial to Congress.

"The result of the Lease.

"From the day the lease was signed, the doom of Alaska was sealed. Baffled and cut off on all sides, the dismayed firms and individuals that followed their various pursuits in the country were forced to withdraw, one after another; the plans then under consideration were abandoned, and to-day there are hardly any white men in the territory but the employés of the Alaska Commercial Company.

"It seems strange, at the first glance, that the lease of two small islands should stop the development of the whole immense territory, but it is not more so than that the possession of a narrow thread of land through a country should give a railroad-ring the power to lord it over cities, counties, and States.

"On said two islands—St. George and St. Paul—the wealth is heaped up on the beach in the form of millions of fur-seals, worth from 10 dollars to 20 dollars each, and without exertion the Alaska Commercial Company makes here alone about 1,000,000 dollars clear profit per year. (The dividends of the Alaska Commercial Company for 1873 reached 1,300,000 dollars.) Now, with such tremendous riches at its command, it is an easy matter for this Company to crush any enterprise in the rest of the

whole territory, which it claims as its own dominion, and where enough natural dangers and difficulties await the trader, fisherman, and explorer without those prepared for them by an overwhelming monopoly.

"As already the old tyrannical Russia Company correctly anticipated that enterprise, discovery, and the development of the territory would interfere with their fur trade, would attract the attention of outsiders, and would curtail their privileges, so has also the Alaska Commercial Company made in its principle to exclude everybody but itself from Alaska, and has therefore declared war against everything that looks like enterprise, exploration, discovery, immigration, and development; and, as already explained, through the means of the tremendous wealth and other advantages furnished to it by the lease of the Fur-seal islands, has already succeeded in making itself the master of the whole territory.

"To give striking proof how, since the advent of the Alaska Commercial Company, the trade with the territory has almost entirely ceased, we will give the lists of the vessels that cleared for Alaska during the months of February, March, and April, respectively, in 1869 and 1874.

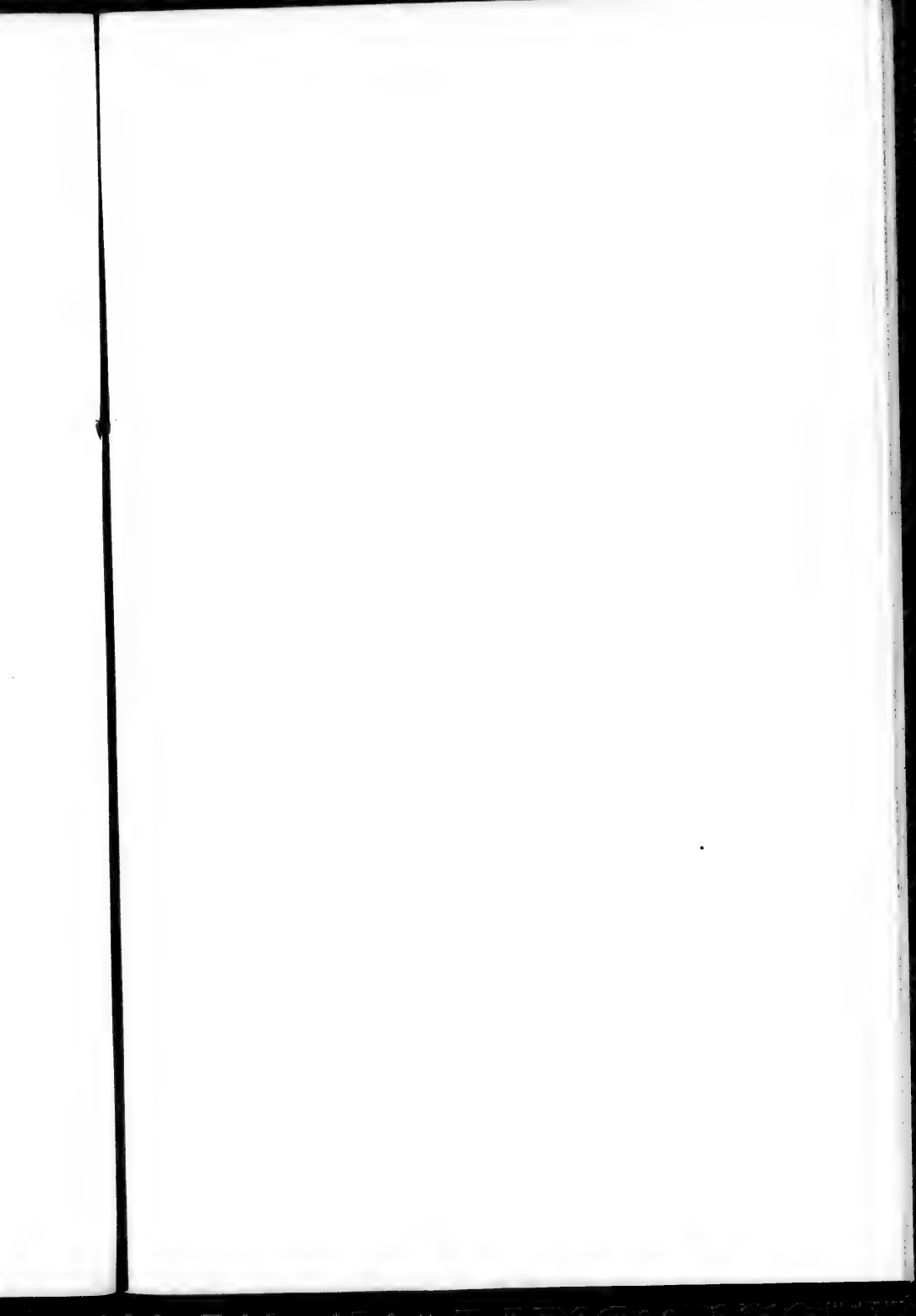
* * * *

"The Comments of the Press."

"We will again quote a few of the many papers and authors that have recognized the fact and have discussed the matter.

"In a work entitled 'Hidden Treasures; or, Fishing Around the North-West Coast,' a very able little work, by J. L. McDonald, we find the following:—

"'The villainous law, passed ostensibly for the protection of fur-bearing animals, should have been more justly entitled "An Act to enslave the people of Alaska, to obstruct the Fisheries, and to check the Development of the North-West Coast." By the terms of this Act the inhabitants of St. Paul and St. George and the adjacent islands are strictly walled in, being forbidden any intercourse with "the rest of mankind;" they are forced by necessity to sell their products to the Company, and to receive such considerations in return as this soulless monopoly may see fit to give. The obstructions which the Fur Company has in former years thrown in the way of individual traders and fishermen in those regions are very well known. The subsidized Federal officers in the interests of the Company have given much trouble to private enterprises; several vessels have been seized on very flimsy pretexts and sent for trial to San Francisco. In every instance those vessels have been liberated, and the masters and supercargoes exonerated by the Courts. Voyages have thus been broken up, heavy losses have fallen upon humble adventurers, failures have followed, and peaceful commerce has been seriously obstructed. Several suits for heavy damages are now pending in the



Courts in the North Pacific coast against the revenue officers formerly serving on the coast of Alaska.'

"And again, in the same book:—

"Sincerely believing that the "fur franchise" in Alaska is obstructive to the development of the vast resources latent in those regions, subversive of the best interests of the people of the territory, and embarrassing to the traders and fishermen in and around those shores, we most earnestly ask Congress to repeal that odious measure, and "let justice be done though the heavens fall."

"The Sacramento 'Reporter' (8th July, 1870), says:—

"Gradually this firm or Company threw off all cloak, openly claimed a monopoly, and warred upon all traders.'

"From the Chicago 'Tribune' (4th January, 1873) we take:—

"It practically holds the same relation to Alaska that the old Russo-American did, and that the Hudson's Bay Company does, to the adjoining British possessions. It has rivals in the trade, but they are gradually disappearing under the treatment known in California as "the little game of freeze-out." The Company is reported very wealthy, and can afford to undersell and overbuy its rivals, until they have to give up the losing game. It is accommodating, even generous, when its own interests are not at stake. It discountenances everything which tends to the development of the country, such as exploration, immigration, &c., because a settled territory produces no furs. If a man is bound to go there, and it cannot help it, it is then full of accommodation, and helps him all it can during his stay there, and hastens his departure.'

"This is an extract from an article by Mr. Harrington, astronomer in the United States' Coast Survey, who had been a year in Alaska.

"A distinguished officer of the United States' army, General Jefferson C. Davis, commanding the Department of Alaska, reported:—

"Since the declaration of Congress at its last session of St. Paul and St. George Islands as special reservations of the Government, they have been under the control of officers of the revenue service, sent there for the purpose of executing the laws prohibiting the landing at or killing of fur-seals upon them. During my official visit there in the beginning of the present summer, and while engaged in investigating the affairs of the natives, as well as the manner in which the troops had performed their duties, I learned that, under one pretext and another, privileged parties had been permitted to land and remain on those reservations, and had been allowed to kill the animals at pleasure. During last summer at least 85,000 seals were killed on the two islands, probably more than that number. The pretext under which this was authorized was that of

enabling the natives to subsist themselves without expense to the Government. In an economical point of view this would seem quite right; but the facts are that the natives are cooped up on these islands, where they are compelled to work for those private parties or starve; in other words, *they are to-day in a complete state of slavery.* Competition in trade has been universally established, and it is now pretty well understood by the natives and traders throughout the country; wherever the former can paddle his canoe, or the latter penetrate with his goods, such is the case. *These isolated islands of St. Paul and St. George, in Behring Sea, the richest possessions in natural wealth, considering their small area, on the continent, form the only exceptions.* The natives are peaceful, honest, and capable of transacting ordinary business quite well, and would doubtless improve themselves if they had a fair chance; *but their present complete enslavement and robbery, by an unscrupulous ring of speculators, will ever prevent such progress.*—(Report of Brevet Major-General, commanding Department of Alaska, to Secretary of War, August 20, 1870.)

"Concerning the true Value of Alaska Territory.

"In order to stifle the interest that the public took in Alaska, and to prevent as much as possible that the same should be made the object of American enterprise, the Alaska Commercial Company has always been very anxious to have Alaska represented as a very undesirable and inhospitable country, without charms of any kind, and its fur trade as throwing off but a limited profit, exhibiting in this respect again the same spirit as the old Russian Company.

"The Government officials, who in various capacities were sent out from time to time to Alaska, and who were generally won over to private interests before they even left San Francisco or Washington, gave, therefore, always the most unfavourable account of the country; while men whose honour and integrity cannot be doubted, represent the country as it is, so far as they know it. Such men are Secretary Seward; Professor Davidson, of scientific fame; General Jefferson C. Davis, former Military Governor of Alaska; Vincent Colyer, and Dr. W. H. Dall, of the United States' Coast Survey.

"All these distinguished persons speak of the astonishing mildness of climate of certain portions of Alaska, of the rankness and luxuriantness of the vegetation, of the density and extension of the timber lands, of the indications of minerals, of the magnitude of the fur trade, and of the incredible abundance of aquatic life."

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By Mr Cross

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CONFIDENTIAL.

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*Second Draft of Counter-Case on behalf
of Great Britain.*

Part I

THE arguments in the following Counter-Case on behalf of the Government of Her Britannic Majesty are, for facility of reference, arranged under the same leading heads which were adopted in the Case presented on behalf of the Government of Her Britannic Majesty pursuant to the Treaty of the 29th February, 1892. Reference will be made to the pages of the Case of the United States in which the same points are considered.

only 5th ?

HEAD (A).—The User up to 1821 of the Waters
of the Behring Sea and other Waters of the
North Pacific.

Allegation that Russian title to shores
of Behring Sea was undisputed

United States' Case, pp. 25, 26.

United States'
Case, pp. 25, 26,
and 33.

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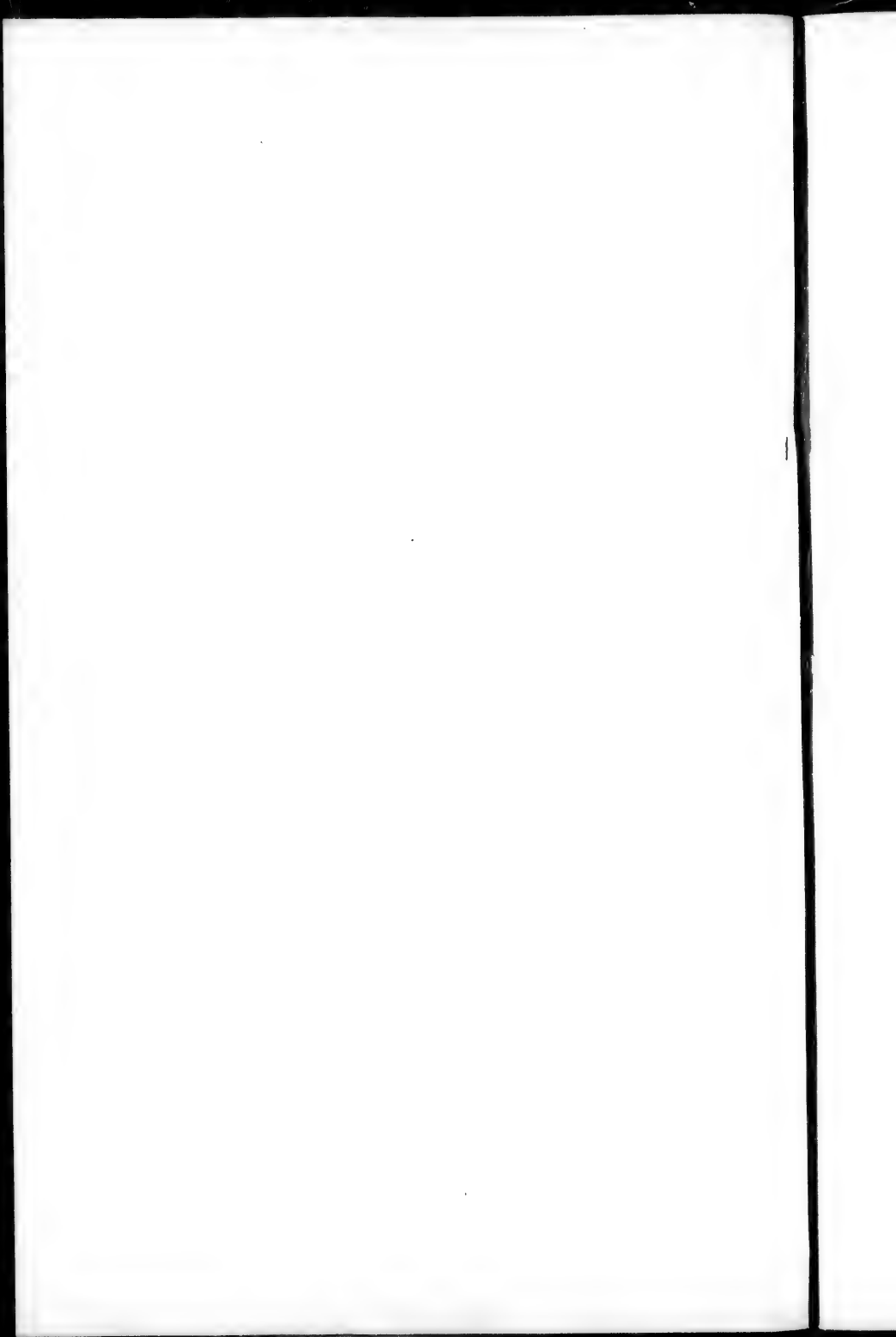
It is alleged on behalf of the United States that the claim of Russia to the territory embracing the Aleutian Islands, the Peninsula of Alaska, and the coast and islands of Behring Sea, was undisputed; while the shores and the adjacent islands of the American Continent south of latitude 60° as far as California were, prior to the year 1821, the subject of conflicting claims on the part of Russia, Great Britain, Spain, and the United States. If by this allegation it is intended to be conveyed that prior to the year 1821 a distinction had been drawn between the parts of the coast of America north and south of latitude 60°, such allegation will be found to be wholly without foundation.

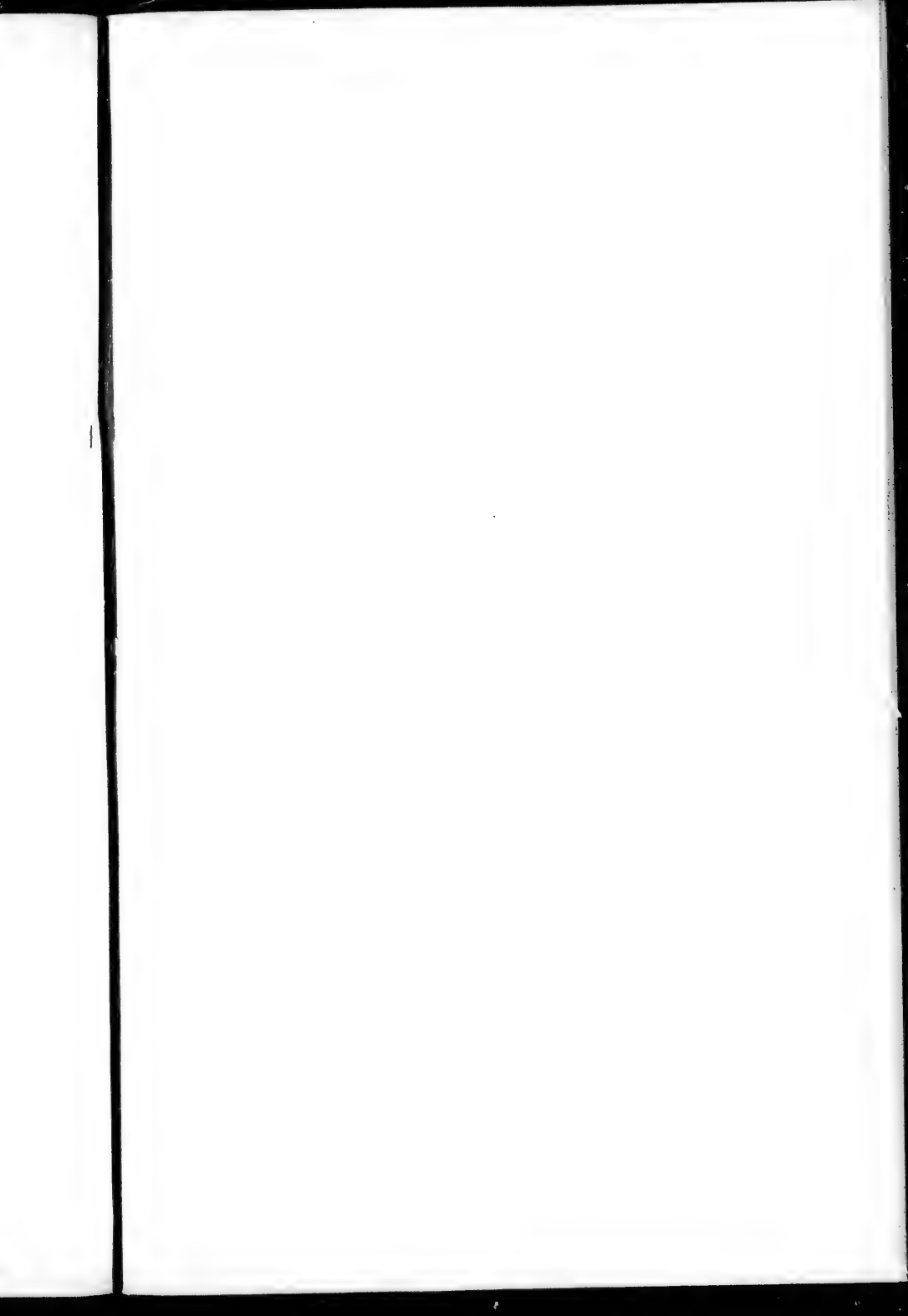
There is no evidence of any recognition by any nation of the claim of Russia to the eastern shores of Behring Sea; and there is practically no evidence of any actual occupation of these shores, or of any assertion of jurisdiction over them prior to the Ukase of 1799. They were, in fact, unoccupied by Russians or by any civilized people, and their outlines were unknown

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X
Reference of U.S. Case to pp. 25, 26, and 33.
U.S. Case, pp. 25, 26, and 33.





to geographers until they were explored by Cook's expedition in 1778 and 1779.

The authority of Captain Cook is invoked as proving the existence of "Russian influence and customs" upon the eastern shores of Behring Sea. Even if he had found Russian "influence and customs," this would not prove Russian occupation or possession of this very extensive line of coast. But his narrative proves the very reverse, and shows that along the whole coast-line he met with no Russians or any other civilized people, but only with tribes of the native inhabitants. He asserts of the Russians at Ounalaska that "they were strangers to every part of the American coast, except what lies opposite this island."

United States' Case, p. 24.

Cook's Voyage, vol. ii, p. 496.

And, further :—

Ibid., p. 493.

"Both Ismyloff and the others affirmed that they knew nothing of the continent of America to the northward [of Unalaska], and that neither Lieutenant Synd nor any other Russian had ever seen it of late. . . . From what we could gather from Ismyloff and his countrymen, the Russians have made several attempts to get a footing upon that part of this continent that lies contiguous to Oonalashka and the adjoining islands, but have always been repulsed by the natives, whom they describe as a very treacherous people."

Captain Cook says that Ismyloff—

Ibid., p. 498.

"was very well acquainted with the geography of these parts, and with all the discoveries that had been made in them by the Russians."

Ismyloff furnished Captain Cook with Charts, one of which—

Ibid., p. 502.

"comprehended all the discoveries made by the Russians to the eastward of Kamschatka toward America, which, if we exclude the voyage of Beering and Tschirikoff, will amount to little or nothing."

The writer says, in conclusion :—

Ibid., p. 506.

"They assured me over and over again that they knew of no other islands besides those which were laid down upon this Chart, and that no Russian had ever seen any part of the continent of America to the northward, except that which lies opposite the country of the Tschutskia."

The Pribyloff Islands themselves were not discovered until 1786 and 1787, and as late as 1821 it appears to have been unknown whether there were islands to the northward, and, if so, whether they were available for sealing.

United States' Case, pp. 23, 24.

United States' Case, Appendix 1, p. 56.

United States
Case, p. 25.

Great Britain's
Case, Appendix 1,
p. 5.

Great Britain's
Case, Appendix,
vol. ii, Part I, p. 4

United States'
Case, Appendix,
vol. i, p. 49.

Lyman's
"Diplomacy of the
United States,"
2nd edition, Boston,
1828, vol. ii, p. 297.

United States'
Case, p. 25.

United States'
Case, Appendix,
vol. i, p. 14.

The only Russian Settlement upon the eastern shore of Behring Sea mentioned in the United States' Case is that of Nushagak, and this fort appears not to have been established until 1818, and to have contained in 1819 a population of no more than five Russian inhabitants.

The official Russian Map published in 1802, which will be found in Appendix IV to the Case on behalf of Great Britain, shows, by the striking errors in the drawing of the coast, that the outlines of the eastern shores of Behring Sea were not known to Russian geographers. Sir Charles Bagot, writing in 1821 in a note made upon this Map, asserts that—

"la Compagnie ne possède point d'Établissements dans et au nord de la presqu'île Alaska, quoique ses vaisseaux visitent ces régions."

The inability of the Russian-American Company to maintain any effective hold upon the territory which it claimed is freely confessed by the Minister of Finance in his letter to the Minister of Marine, dated the 9th April, 1820.

In the discussion of the Convention of 1824, which will be found in "Lyman's Diplomacy of the United States," vol. 2, p. 297, it is explicitly stated:—

"We have said nothing of the coast to the northward of Bristol Bay, because it has never been pretended that the Russians had any Settlements on that side."

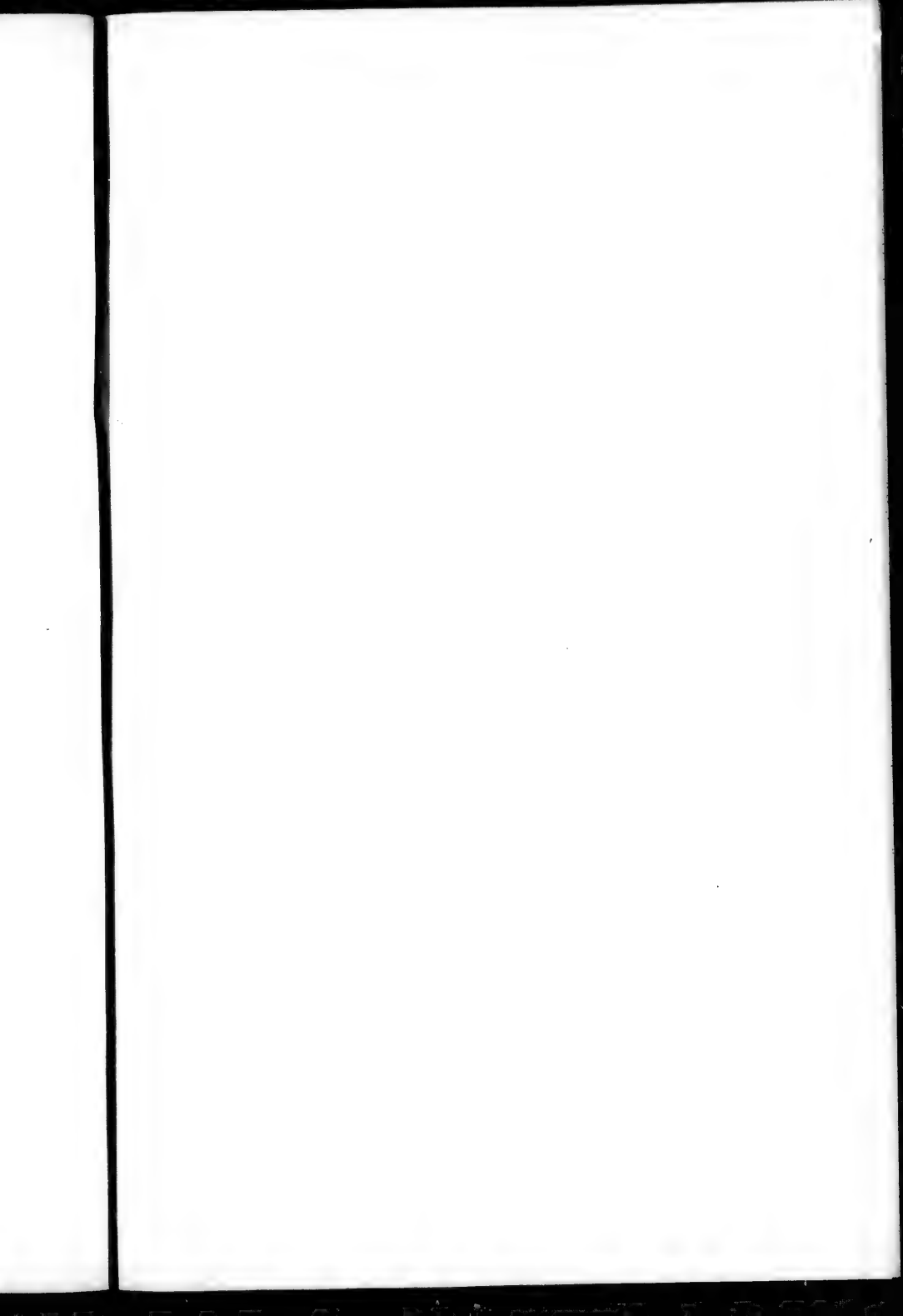
It is clear, therefore, that there is no foundation for the assertion that—

"by first discovery, occupation, and permanent colonization, the shores and islands of Behring Sea, the Aleutian chain, and the Peninsula of Alaska became, probably as early as 1800, an undisputed part of the territory of the Russian Empire."

While no other nation drew any distinction between the title of Russia upon the American coast to the north and to the south of latitude 60°, it is clear that Russia herself made no such distinction in her claims, but claimed to legislate for the whole north-west coast from the 55th degree to Behring Strait.

The Ukase of 1799 asserts this plainly:—

"1. By the right of discovery in past times by Russian navigators of the north-eastern [sic] part of America, beginning from the 55th degree of north latitude, and on the



chain of islands extending from Kamschatka to the north to America and southward to Japan, and by right of possession of the same by Russia, we most graciously permit the Company to have the use of *all hunting grounds and establishments now existing on the north-eastern [sic] coast of America, from the above-mentioned 55th degree to Behring Strait*, and also on the Aleutian, Kurile, and other islands situated in the north-eastern ocean."

The Ukase thus claimed impartially the whole of the coast so described, and in the absence of any distinction between the northern and the southern portions of the coast affected by that document, the facts stated in Chapter I of the Case presented on behalf of Great Britain have equal weight in the consideration of the existence and extent of Russian jurisdiction over any and every part of the coast so claimed, and demonstrate that foreigners traded there freely without molestation or interference.

That the Government of the United States did not recognize as "undisputed" the claim of Russia to the coasts of Behring Sea is clear from the statement made by Mr. Adams on the 17th July, 1823, to Baron Tuyll, the Russian Minister at Washington, that—

See "Memoirs of John Quincy Adams," vol. vi, p. 163.

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"we should contest the right of Russia to any territorial establishment on this continent."

Mr. Adams reiterates this contention in a despatch dated the 22nd July, 1823, in which he declares that Russian rights—

Great Britain's Case, p. 34.

"were confined to certain islands north of the 55th degree of latitude."

And that—

"Russia had never asserted a right of sovereignty over any part of the North American Continent."

But whatever may have been the claims of Russia, whether admitted or not, of the right to the possession of the shores of the north-west coast of America and the islands adjacent thereto, no claim had ever been made prior to the year 1821 to exclude other vessels from navigating the waters of the Behring Sea, or to exercise jurisdiction over the waters of that sea as *mare clausum*, or an internal sea. On the contrary, the ground or justification for the

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attempted interference by Russia in the year 1821 was the competition with the Russian-American Company by the vessels and traders of other nations. Reference is made to the authorities quoted in Chapter I, Head (A), of the Case on behalf of Great Britain, and to the letters Nos. 1, 2, 3, 4, and 5 in the correspondence of the Russian-American Company, which contain numerous references to the presence of foreign competitors in trade.

h 10
United States' Case, Appendix 1, pp. 49-57.

Allegation that Ukase of 1799 asserted exclusive rights, and was acquiesced in by foreign Powers.

United States' Case, pp. 35-50.

United States' Case, pp. 35-50.
United States' Case, Appendix 1, p. 12.

h 11
Mr. Middleton to Mr. Adams, American State Papers, Foreign Relations, vol. v, p. 461.

Great Britain's Case, p. 25.
Ibid., pp. 29-34.
Ibid., p. 27.

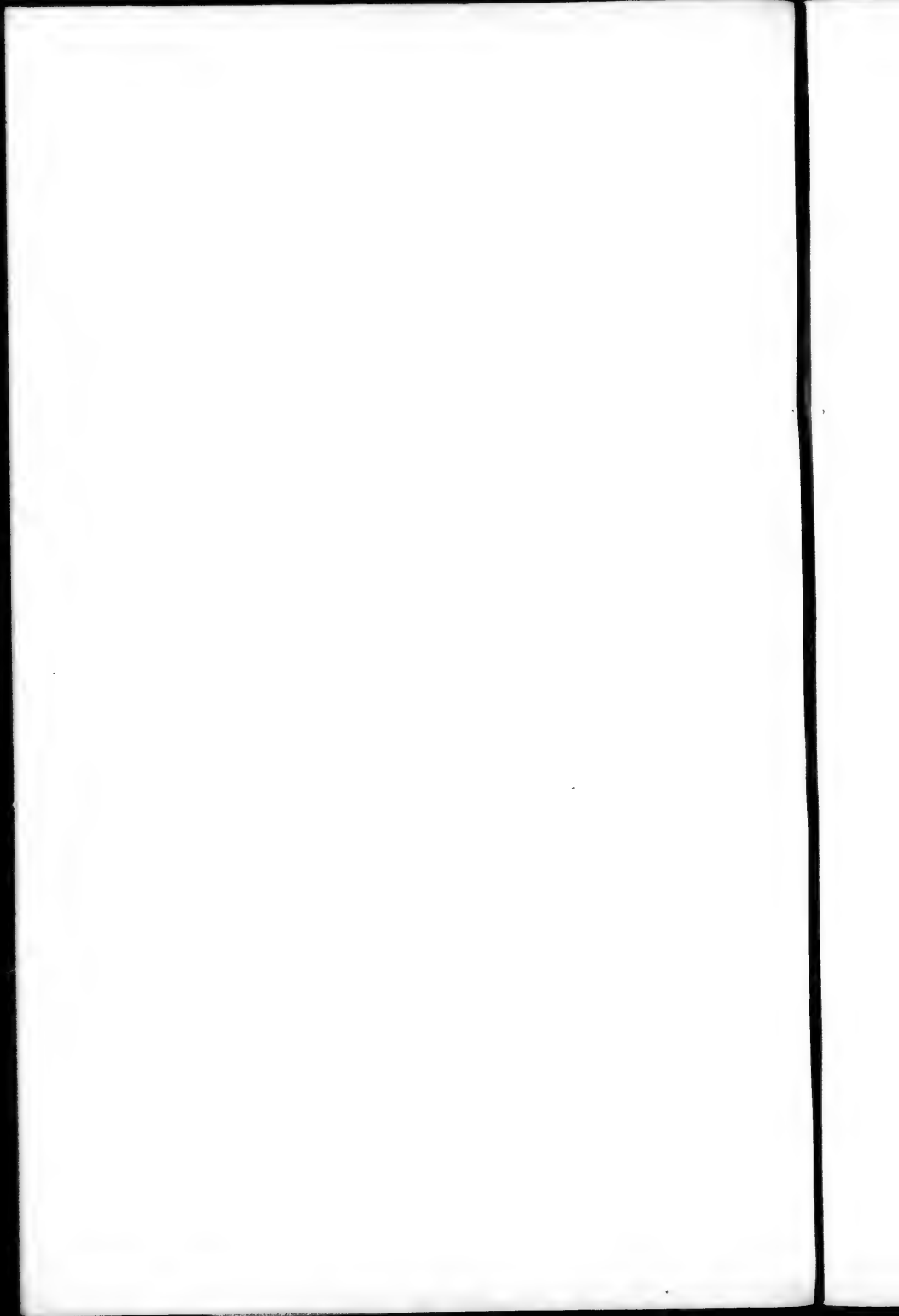
It is further alleged on behalf of the United States, that by the Ukase of 1799 Russia claimed the exclusive right to all products of the chase and commerce north of 55°, and that this Ukase, though setting forth a claim of exclusive Russian jurisdiction down to latitude 55°, called forth no protest from any foreign Powers. To the second point there is the conclusive answer, in the words of Mr. Middleton, that the—

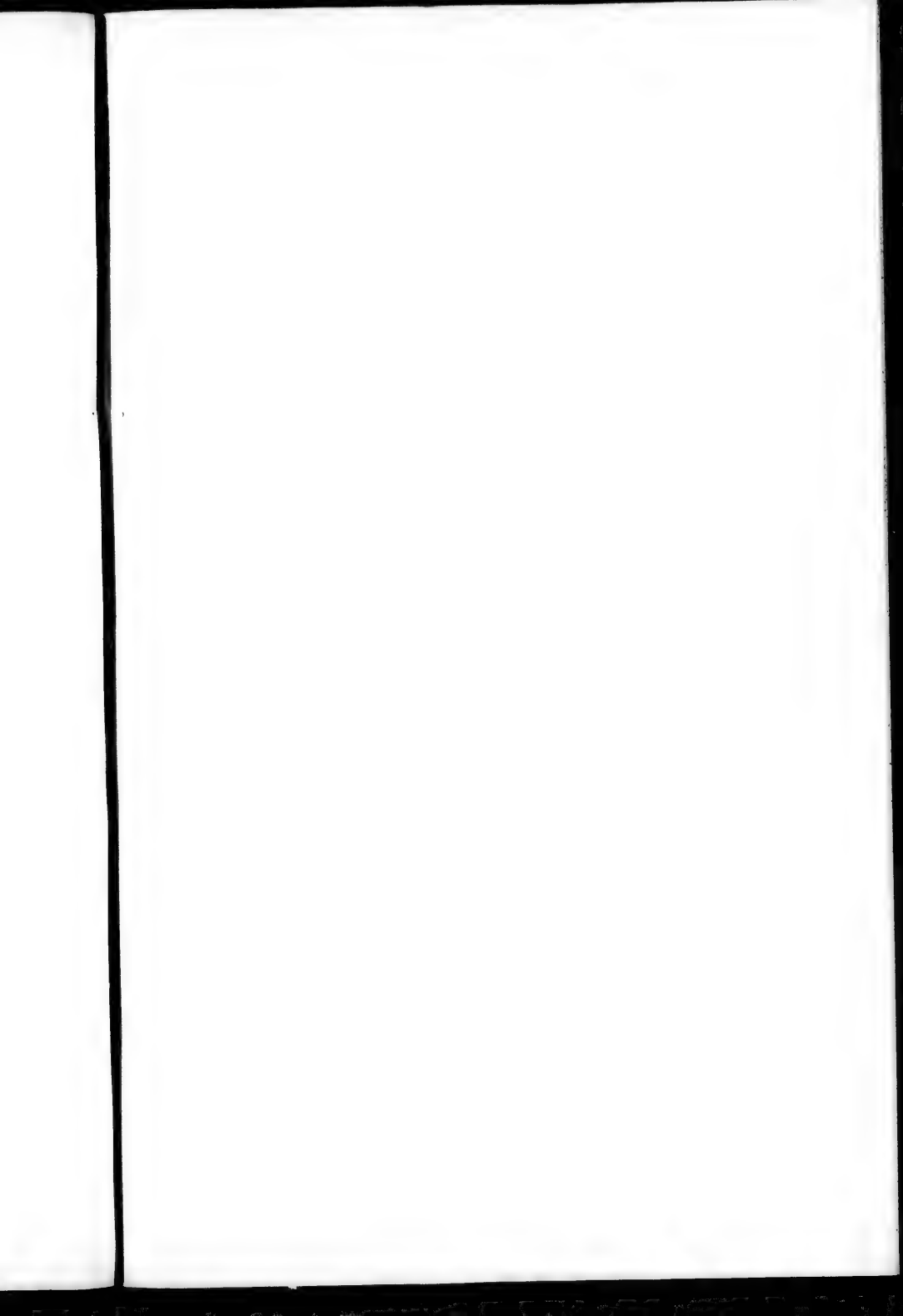
"Ukase, which is, in its form, an act purely domestic, was never notified to any foreign State with injunction to respect its provisions."

Moreover, as appears from the provisions of the Ukase itself, it dealt only, as was pointed out by Mr. Middleton and by Mr. Adams, with the rights of the Russian-American Company, to the exclusion of other Russian subjects.

In support of the view, that the Charters to the Russian-American Company were not and did not purport to be international documents, but purely domestic acts, not intended to affect foreign nations, reference may be made to the language of the documents themselves. In the year 1821 the Ukase of the 4th September, which expressly affected foreigners, was officially communicated to the Governments of Great Britain and the United States. His Imperial Majesty the Emperor of Russia, on the 13th September, 1821, i.e., within a few days of the promulgation of the Ukase, granted a Charter to the Russian-American Company for twenty years, in which, by Article 2, it was stated that the Russian-American Company enjoyed the privilege of hunting and fishing to the exclusion of all other Russian or foreign

United States' Case, Appendix 1, p. 25.





subjects throughout the territories on the coast of North-West America, from latitude 51° north to Behring Straits. And the exclusion of both Russian subjects and foreigners is further referred to in Article 6 of the same Charter. But by the confirmation of this Charter in the year 1829, the right to profit in the fur and fishing industries is reserved to the Company to the *exclusion of all other Russian subjects*, and the rights of foreign nations are expressly stated to be governed by the Treaties of 1824 and 1825. Again, upon the occasion of a grant of a further Charter in the year 1844 to the Russian-American Company of the right to carry on the fur and fishing industries, it is made, as before, *to the exclusion of all Russian subjects*. At no time prior or subsequent to the Ukase of 1821 were the Charters to the Russian-American Company treated by Russia as documents affecting foreign Powers or otherwise than as purely domestic Acts.

United States' Case, Appendix I, p. 25.
Ibid., p. 27.

Ibid., p. 29.

It is further again to be noted, that the exclusive rights specially granted to the Russian-American Company were rights to be exercised on *territories* already acquired or thereafter to be discovered within the prescribed area, and not upon non-territorial *waters* of Behring Sea or any other non-territorial waters.

Great Britain's Case, p. 28.

It is further alleged on behalf of the United States that, under the Ukase of 1799, the Russian-American Company, acting under the sanction of the Russian Government, did not permit foreign vessels to visit Behring Sea; that up to the date of the Treaties of 1824 and 1825 Russia did assert and exercise exclusive rights of commerce, hunting, and fishing in all the waters of the Behring Sea; and that there is no record that hunting and trading had ever been carried on (by subjects or citizens of Great Britain and the United States) in Behring Sea prior to the year 1821. No one of these allegations is supported by the facts, and the allegation that under the Ukase of 1799 foreigners were not permitted to visit that sea is in direct contradiction of the assertions of Mr. Middleton and Mr. Adams, quoted above, and of the Report of Golovnin, quoted at p. 32 of the Case for Great Britain. No instance is to be found of Russia preventing foreign vessels from visiting Behring Sea, but, in addition, it must be distinctly remembered that the claims and

Allegation that under Ukase of 1799 foreign vessels were not allowed to visit Behring Sea.

United States' Case, p. 42.

United States' Case, p. 42.
Ibid., p. 69.

exercise of jurisdiction by Russia extended equally to the whole coast of America from Behring Straits to latitude 55°, and in the year 1821 to latitude 51°. There were at all times numerous instances of foreign vessels trading to places on the coast of America north of latitude 51° and latitude 55°, and the claims attempted to be set up by the Russian Ukases purported to interfere with and limit the exercise of these rights just as much as the rights of trading within Behring Sea.

On the other hand, the solitary instance in which it is alleged that Russia actually asserted exclusive rights over Behring Sea prior to 1821 is the case of the Riccord-Pigott contract in 1819. Three letters (dated 10th April, 1820, 23rd April, 1820, and 31st March, 1821) are relied upon as—

“illustrating the complete control which Russia claimed and actually exercised over Behring Sea prior to 1821.”

From the facts alluded to in these letters, it appears that Riccord, the Superintendent of Kamtchatka, had made an agreement with Pigott, an Englishman, for ten years, from 1819—

“with reference to fishing for whales and extracting oil from these and other marine animals on the shores of Kamtchatka and on those of all Eastern Siberia, in the harbours and bays and amongst the islands.”

This contract was undoubtedly disapproved by the Russian Government, which, having granted to a Russian Company a monopoly of trade in these regions, to the exclusion of all other Russian subjects, was naturally unwilling to allow any part of this monopoly to be sublet to foreigners. The Russian-American Company is therefore instructed to turn its attention to the whale fishery, and to employ a ship in fishing—

“since the whale-fishing industry may be of use as a means of assisting the inhabitants of Kamtchatka and Okhotsk when the other fisheries fail.”

The Government further ordered that no foreigner should be allowed to enter a merchant guild, or to settle at Kamtchatka or Okhotsk, and that no foreign merchant-vessel should be permitted—

The Riccord-Pigott contract.

United States' Case, p. 45.

United States' Case, p. 45.

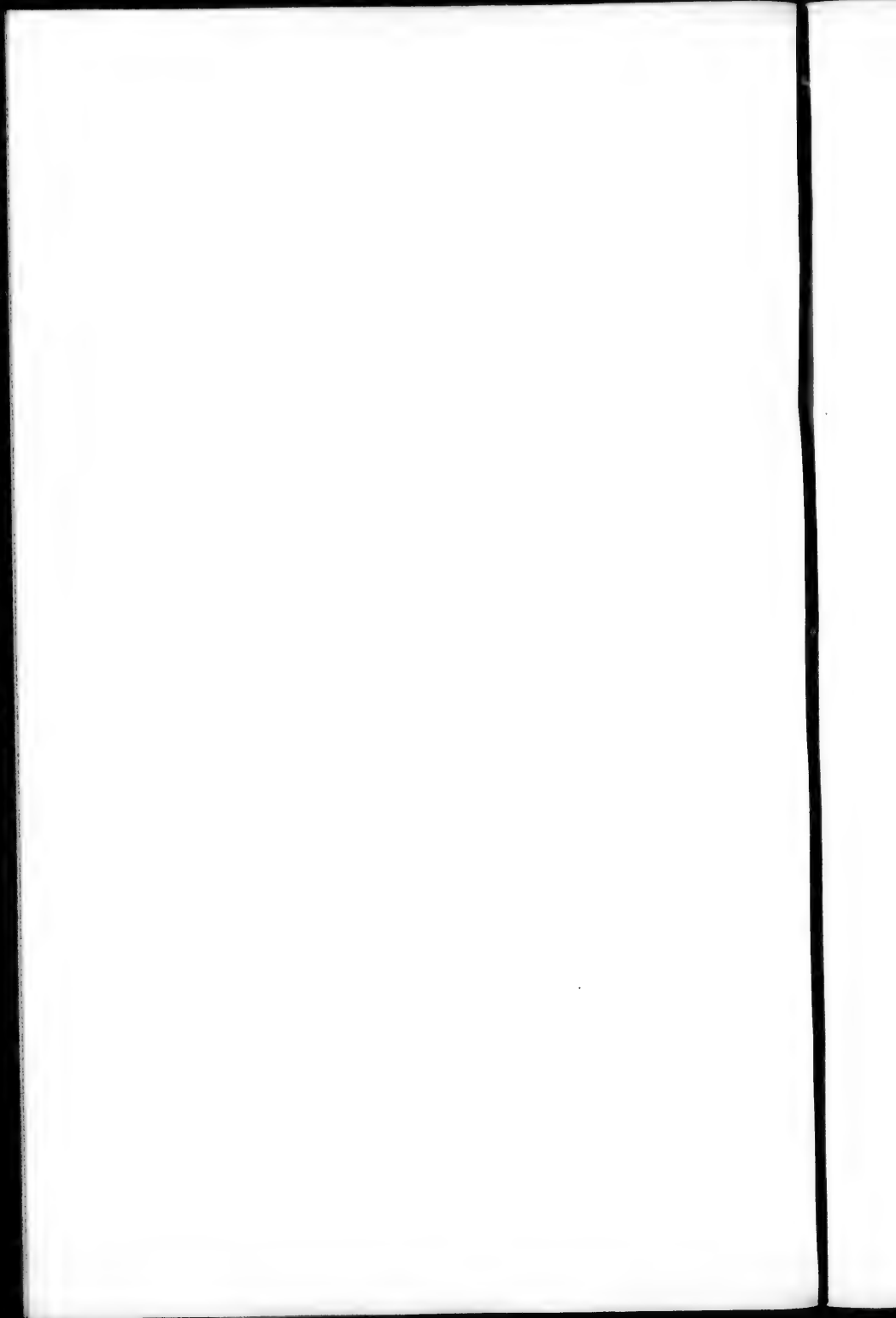
United States' Case, Appendix 1, pp. 51-56.

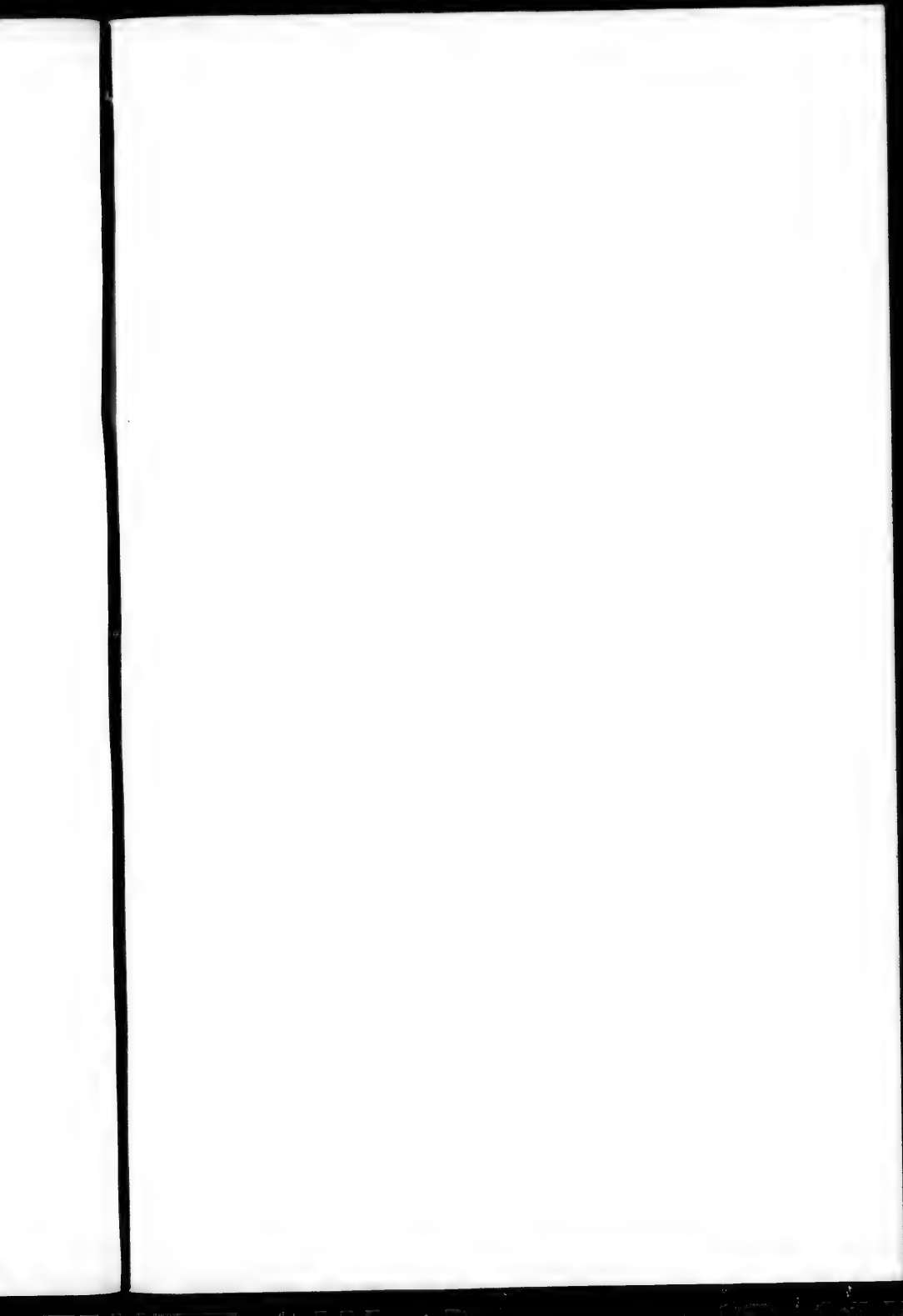
United States' Case, p. 45.

Letter, April 23, 1820.

Letter, April 10, 1820, paragraph 1 (British translation)

¹ibid., paragraph 2.





"to trade at those places under any circumstances, or to enter the ports of Eastern Siberia except in case of distress. . . . Furthermore, the Englishman Davis at Okhotsk, and Dobello's agent in Kamchatka, are to be informed . . . that the Government refuses them permission to remain at those places, or to build houses or hold real property there; the local authorities shall afford them all proper facilities for disposal of their property and leaving the country."

These instructions have been quoted at length because they show clearly that the Russian Government exercised in this instance no jurisdiction other than the strictly territorial jurisdiction which attaches to every nation in right of its possession of the soil.

The foreigners are prohibited from residing, trading, entering ports, building houses, or holding real property, and they are ordered to leave the country.

No attempt is made to exclude them from navigating the adjoining *seas*, though it is clear that the Russian Government was prepared to use every means within its power to prevent the possibility of foreign competition in trade.

Several passages are quoted from the same correspondence in the Case presented on behalf of the United States, as proving the assertion by Russia of a further jurisdiction over waters.

Special attention is called to these quotations, because it has been found, on comparing the English translations which are printed in vol. i of the Appendix to the Case of the United States with the Russian originals which appear at the end of the same volume, that in every passage quoted in the Case in this connection the words relied on as proving an assertion of *marine* jurisdiction are mere interpolations of a translator or annotator, and nowhere appear in the original Russian text.

The quotations in question are here set out, the interpolated passages being printed in *italics* :—

"Having for the benefit of the American Company excluded all foreigners from Kamchatka and Okhotsk, and prohibited them from engaging in trade and from hunting and fishing in all the waters of Eastern Siberia, the Government fully expects that the Company, on its part, will hold itself responsible for supplying those regions with all necessaries. . . .

"In conclusion, it is stated as the decision of His Majesty the Emperor, in view of possible future complications of this nature, that no contracts involving the free admission or navigation for trade of foreign ships or foreign subjects in the

Quotations from correspondence of the Russian-American Company.

United States' Case, p. 46

United States' Case, Appendix, vol. i, p. 49, &c.

United States' Case, p. 46.

Ibid., p. 47.

waters adjoining or bounded by the coasts of Russian Colonies will be approved by the Imperial Government."

United States' Case, p. 47.

Further, at p. 47:—

Ibid., p. 48.

" . . . Basing your own action upon this proceeding of our Highest Protector, you as Commander of all our Colonies must prohibit with equal strictness all foreigners from engaging in any intercourse or trade with native inhabitants, *as well as from visiting the waters frequented by sea-otters and fur-seals, over which our operations extend* under penalty of the most severe measures, including the confiscation of ships and the imprisonment of crews engaged in this illegal traffic. You must act with the greatest severity in cases where foreigners have sold to the natives arms, powder, and lead. *They must be made to understand that their presence in our waters is contrary to our laws, and that they will never be admitted to any port unless you or your subordinates convince yourselves that such is necessary for the saving of life.* In a word, you must preserve an attitude in full accord with the views of the Imperial Government on this subject, *and protect against all intruders the domain of land and water granted to us by the grace of the Emperor and necessary for our continued existence and prosperity.* You must transmit these instructions without delay to your subordinate Commanders for their conduct in their intercourse with foreigners, and especially to the Commanders of ships navigating our waters, *to enable them to drive away the foreign intruders."*

See Appendix for correct translation in full.

United States' Case, p. 49.

And again, at p. 49:—

" . . . The principles involved in this action of the Government you must also observe in dealing with foreigners who may visit our Colonies, *using all the force at your command to drive them from our waters. . . .*"

and further draft

Other instances of inaccurate translation and of interpolations in the translation might be given, ~~but~~ the above, which are taken from passages quoted and relied upon in the Case of the United States, are sufficient to prove the utterly unreliable nature of the translation given in vol. i of the Appendix to the United States' Case. It will be seen that when the spurious passages are expunged, the whole of the evidence disappears upon which the advisers of the United States' Government have relied as establishing that the Ukase of 1821 was merely declaratory of pre-existing claims of exclusive jurisdiction as to trade in Behring Sea, which had been enforced therein for many years.

The "pre-existing claims" and their enforcement for many years, so far as they imply any

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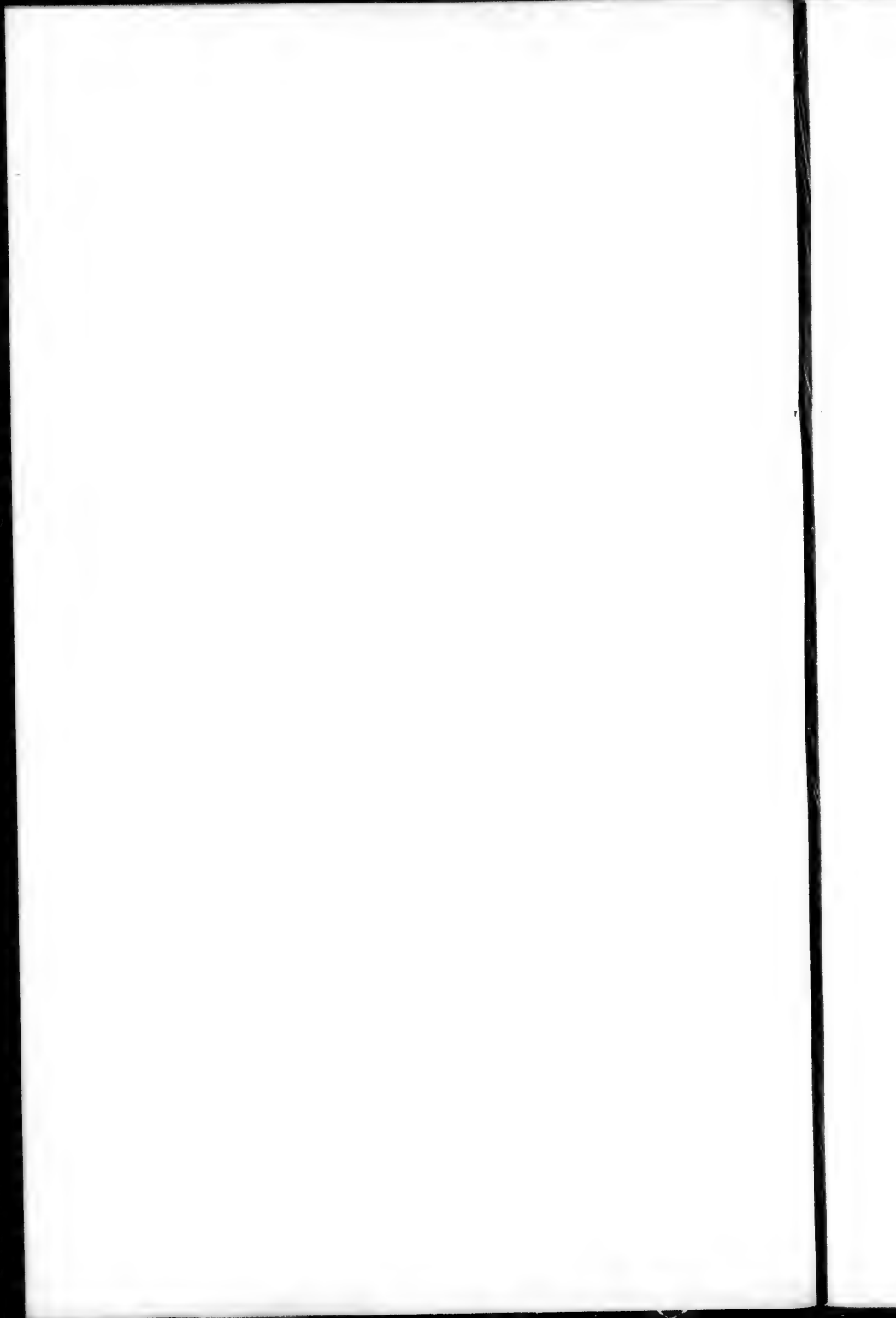
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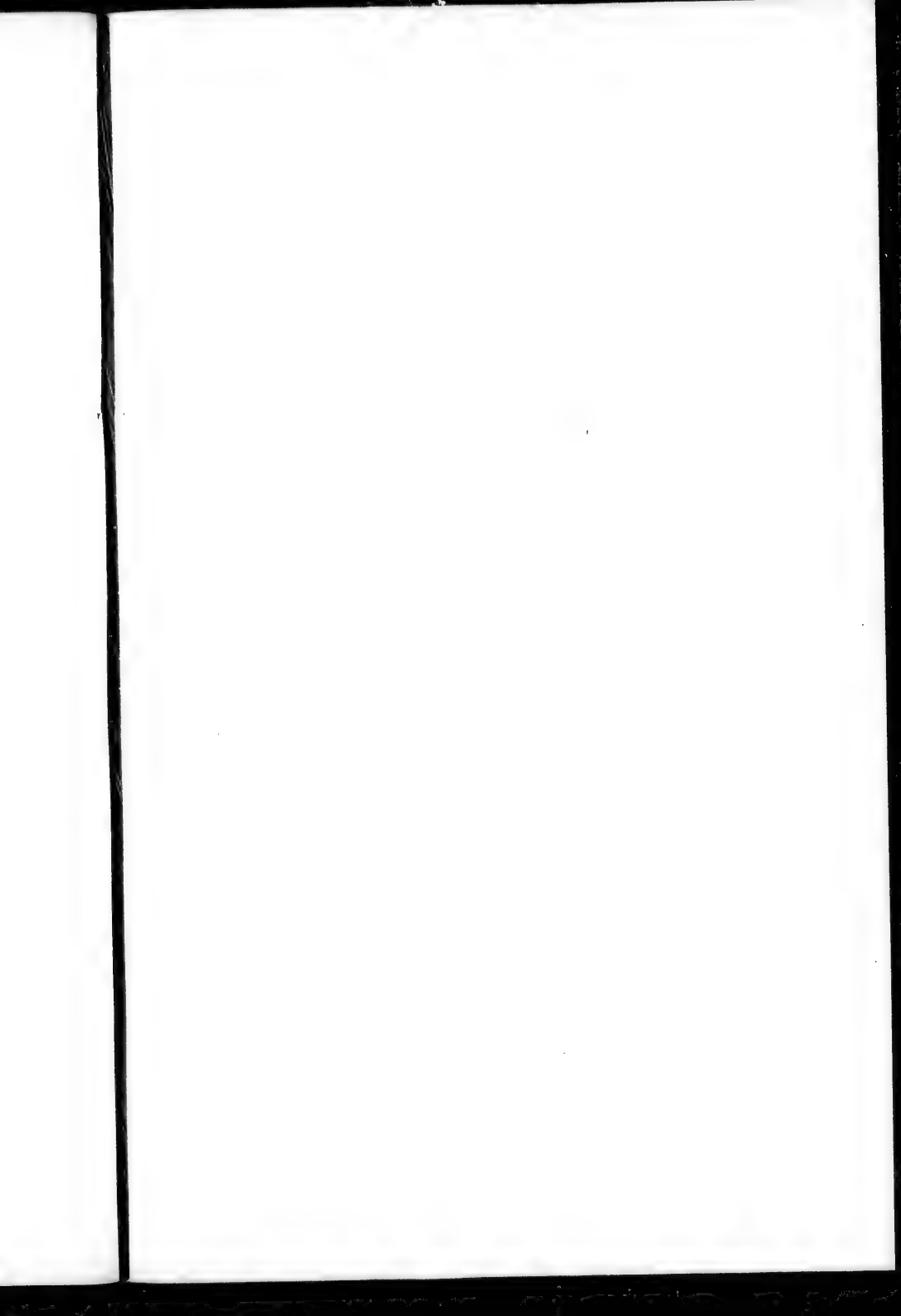
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Ibid.





extraordinary maritime jurisdiction, are merely creatures of the imagination or the translator.

The whole of the Russian correspondence has been carefully retranslated, and the correct English version has, for the convenience of the Tribunal, been printed in parallel columns side by side with the United States' version, for purposes of comparison.

It is much to be regretted that the advisers of the Government of the United States should have been misled in this and in many other instances ~~by errors which appear to have arisen~~ from the incompetence of the translator, or from the accidental incorporation of the comments of an annotator into the text of the translation.

These letters prove, when more carefully read, that the Russian Company recognized the presence of foreign vessels upon the high seas as inevitable, and that its powers of interference with their operations were strictly limited to the ordinary territorial jurisdiction possessed by Russia. In the letter of the 23rd April, 1820, the Board of Administration writes to the Chief Manager:—

"In view of the fact that the Government has perceived that these schemes would have done much harm to the Company, and has prohibited foreigners not only from settling, but also from trading, at Kamchatka and Okhotsk, where there are established authorities, and where a surveillance can be exercised, it is your duty, as the Manager of the Colony, to use your best endeavours to carry out His Imperial Majesty's orders, by strictly prohibiting the foreigners who may visit the Colony from engaging in a traffic with the Indians, and in case any of them violate the Regulations, not to be afraid to arrest the bold adventurers, and seize their ships, if they carry on a traffic injurious to the Company's interests at places, or on islands occupied by it, and especially if they supply the Indians with arms, powder, and lead. You should not even allow them to enter your ports unless you find it necessary to buy something from them which the Company urgently requires. In a word, you should adopt towards these adventurous traders such an attitude as it is proper for the Governor of all the places occupied by the Company to assume. Do not fail to instruct the authorities under you how to deal with foreigners coming to your shores. Special instructions should be given to the Commanders of our ships which are detached to the various points with regard to the action they are to take if they find anywhere foreign ships engaged in illicit trading."

The presence of foreigners is further proved by the letter of the 3rd August, 1820, in which the Board instruct their Chief Manager—

Letter, April 23,
1820 (British
translation)

Letter, August 3,
1820 (British
translation).

"Not [to] have any dealings with the foreigners, *unless you are absolutely compelled to have recourse to them to obtain something which is indispensable to you.* Such dealings have always hitherto been unprofitable, inasmuch as the prices they give for furs are very much lower than those which obtain in Russia."

In the inclosure contained in the same letter reference is made to instructions by which the officers at Kadiak and Unalaska and the Seal Islands were directed to abstain *as far as possible* "from having any dealings with the foreigners who come to our Colonies."

HEAD (B).—*The Ukase of 1821.*

The presence of foreigners in the Russian possessions has already been alluded to as the chief motive and justification for the Ukase of 1821.

That this Ukase did purport to exclude foreigners from approaching within 100 miles of—

"the whole of the north-west coast of America, beginning from Behring Straits, to the 51st degree of northern latitude,"

may be admitted.

It is, however, denied that—

"so far as it concerned the coasts and waters of Behring Sea,"

the Ukase of 1821 was regarded by Russia as merely declaratory of existing rights.

This assertion is made more than once in the United States' Case, but no ground for the distinction suggested between the coasts and waters of Behring Sea and those of other seas appears in the Ukase itself, which, like the Ukase of 1799, asserts a claim to the whole of the specified coast-line, and regards the whole as subject to the same jurisdiction.

The correspondence of the Russian-American Company, which is quoted in proof of the assertion, has already been dealt with in this connection.

It may, however, be here noted that the passage which is omitted in the quotation at p. 41 of the United States' Case indicates that the Russian version, and not the so-called translation, is the correct text.

Allegation that the Ukase of 1821 was merely declaratory of pre-existing claims of exclusive jurisdiction

United States' Case, pp. 41-49.

United States' Case, p. 49.

Ante, p.

Great Britain's

Case, p. 39.

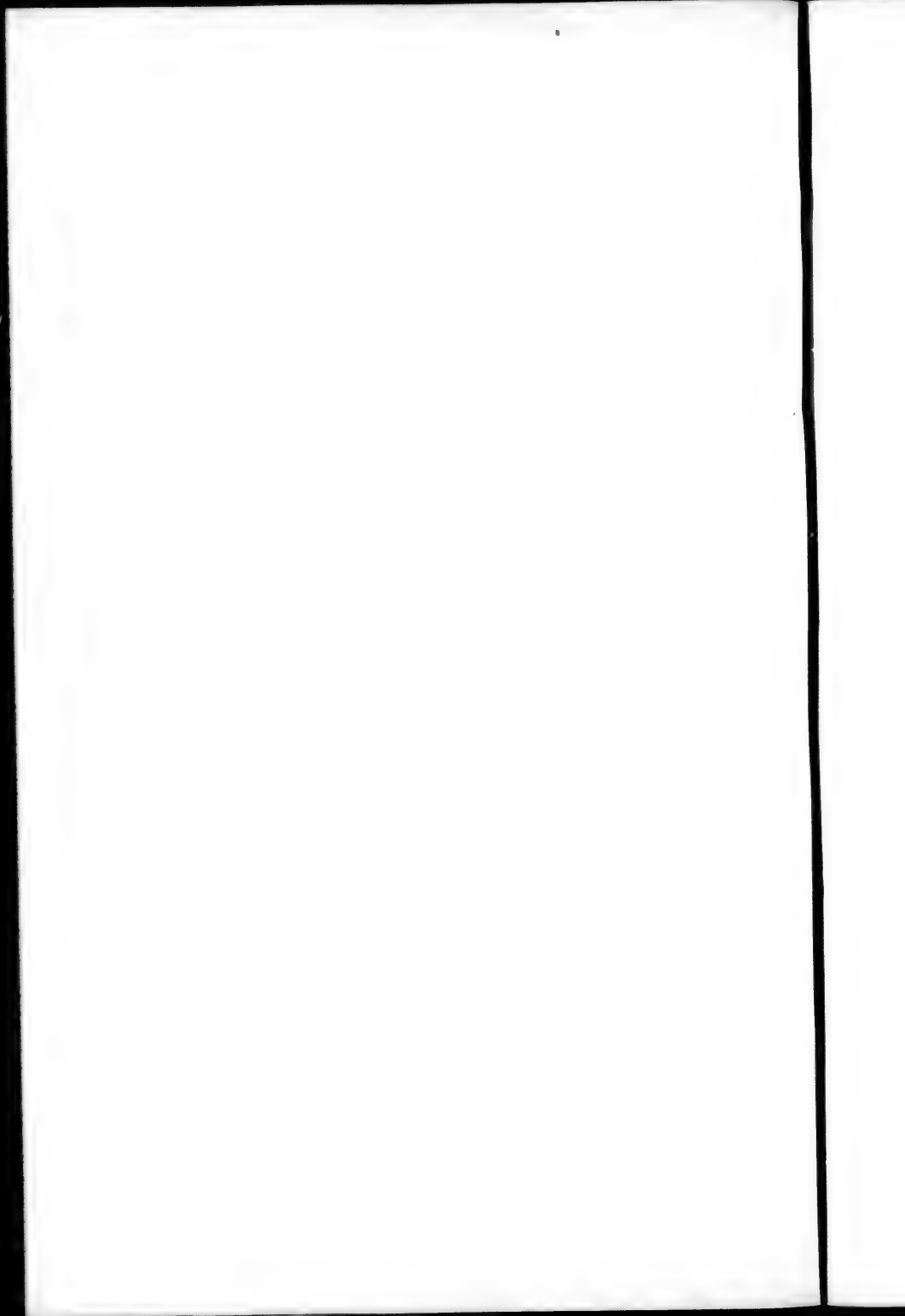
United States' Case, Appendix 1, p. 16.

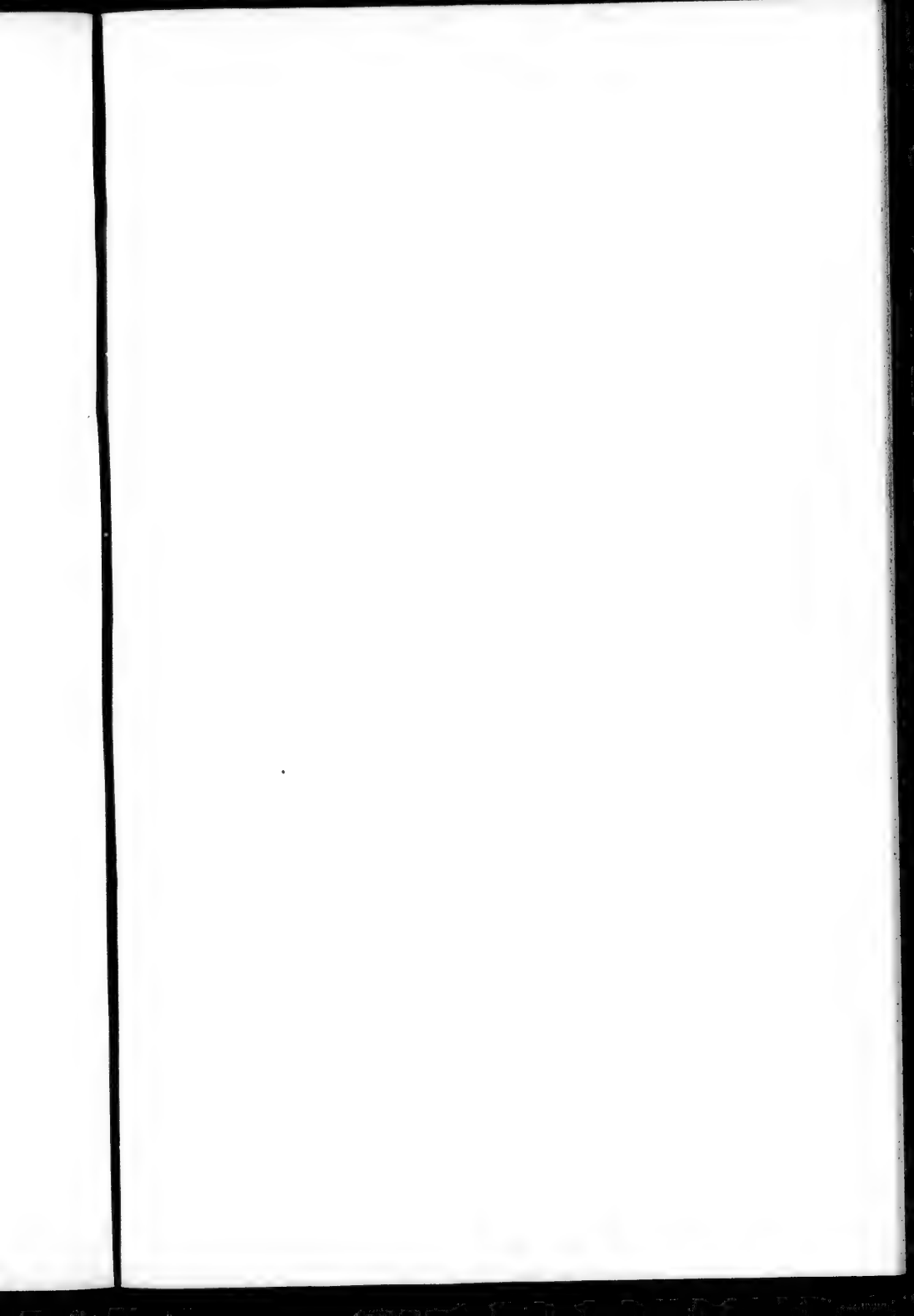
United States' Case, pp. 41-49.

Ibid.

United States' Case, Appendix, vol. i, pp. 59, 60.

United States' Case, p. 41.





The omitted passage runs as follows (as printed in the Appendix to the United States' Case):—

United States' Case, Appendix 1, p. 60.

"In your dealings with foreigners you will act especially under the provisions of the following paragraphs contained in the new Regulations: 35, 39, 41, 43, 44, 46-49, 51, 52, 53, 55-60, 62, 64, 67-70. These paragraphs bear plainly upon the points in dispute between us and other seafaring nations."

The words in italics are not in the Russian text, which, without mentioning foreigners, merely states that "the Board calls particular attention" to paragraphs 35, 39, &c.

A reference to the abstract of these Regulations, which is printed in the Appendix to the Case on behalf of Great Britain, will show that none of the Regulations, with the exception of Articles 60, 61, 62, and 70, have any reference to dealings with foreigners.

Great Britain's Case, Appendix, vol. i, p. 11.

HEAD (C).—*The question whether the Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825.*

The consideration of the Treaties of 1824 and 1825 in the United States' Case is prefaced by the statement that—

"it was only when the Ukase of 1821 sought to extend the Russian claim to the American continent to latitude 51°, and to place the coasts and waters of the ocean in that region under the exclusive control of the Russian-American Company, that vigorous protests were made by the Governments of the United States and Great Britain; and the correspondence which grew out of those protests shows that they were inspired by the claim of jurisdiction over large portions of the Pacific Ocean (as distinguished from Behring Sea), and by the conflicting claims of the three nations to the coast over which Russia sought to extend exclusive authority."

United States' Case, p. 50.

United States' Case, p. 50.

Allegation that protests were directed to claim of jurisdiction over Pacific Ocean and to claim on coast of Continent.

In the course of the subsequent discussion of the Treaties, it is alleged, on behalf of the United States, that neither in the protests, negotiations, nor Treaties is any reference found to Behring Sea, and that in the Treaties no reference is made to Russian jurisdiction so far as it relates to Behring Sea, although it is expressly and conspicuously renounced as to the Pacific Ocean, and that the body of water known as Behring

Allegation that Treaties recognized by implication Russia's rights over Behring Sea.

United States' Case, p. 56.
Ibid., p. 57.

United States' Case, p. 56.

Sea was not included in the phrase "Pacific Ocean," as used in the Treaty of 1825.

This is termed the "implied recognition of two great nations" of the rights of Russia in Behring Sea.

It is difficult to understand upon what facts these allegations are based. It is the fact that during the whole of the negotiations prior to 1824 and 1825 no reference is made by name to Behring Sea, but this was because the whole area ~~of concern~~ affected by the Ukase was the subject of discussion, and no distinction was drawn between the parts of the Pacific Ocean north and south of the Aleutian Islands.

It would seem from the foot-note at p. 50 of the United States' Case that the draftsman of the Case had not had any opportunity of studying the correspondence with Great Britain, except the extracts which were inclosed in Lord Salisbury's despatch, dated the 2nd August, 1890, and the positive assertion that no reference to Behring Sea is to be found in the negotiations might have been modified, if the writer had had access to the complete correspondence.

It must be remarked, however, that Mr. G. Canning's despatches of the 24th July, 1824, and the 8th December, 1824, in both of which he refers to Behring Straits, were inclosed in Lord Salisbury's despatch, and it must be presumed that the advisers of the United States' Government were also acquainted with the emphatic reference to the same point in Mr. Middleton's Memorial of the 17th December, 1823.

Reference is made to Chapter II of the Case on behalf of the Government of Her Britannic Majesty and the correspondence set out in the Appendix thereto. The Ukase of the 4th September, 1821, which led to the protests, negotiations, and Treaties, claimed the pursuits of commerce, whaling, and fishing on all islands, ports, and gulfs, including the whole of the north-west coast of America from Behring Strait to the 51st degree of the northern latitude and the Aleutian Islands.

M. de Polticia, in his letter to Mr. Adams of the 28th February, 1822, claims that the Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree. The

*in
Pacific Case
1859-76*

United States' Case, Appendix, vol. i, p. 242.

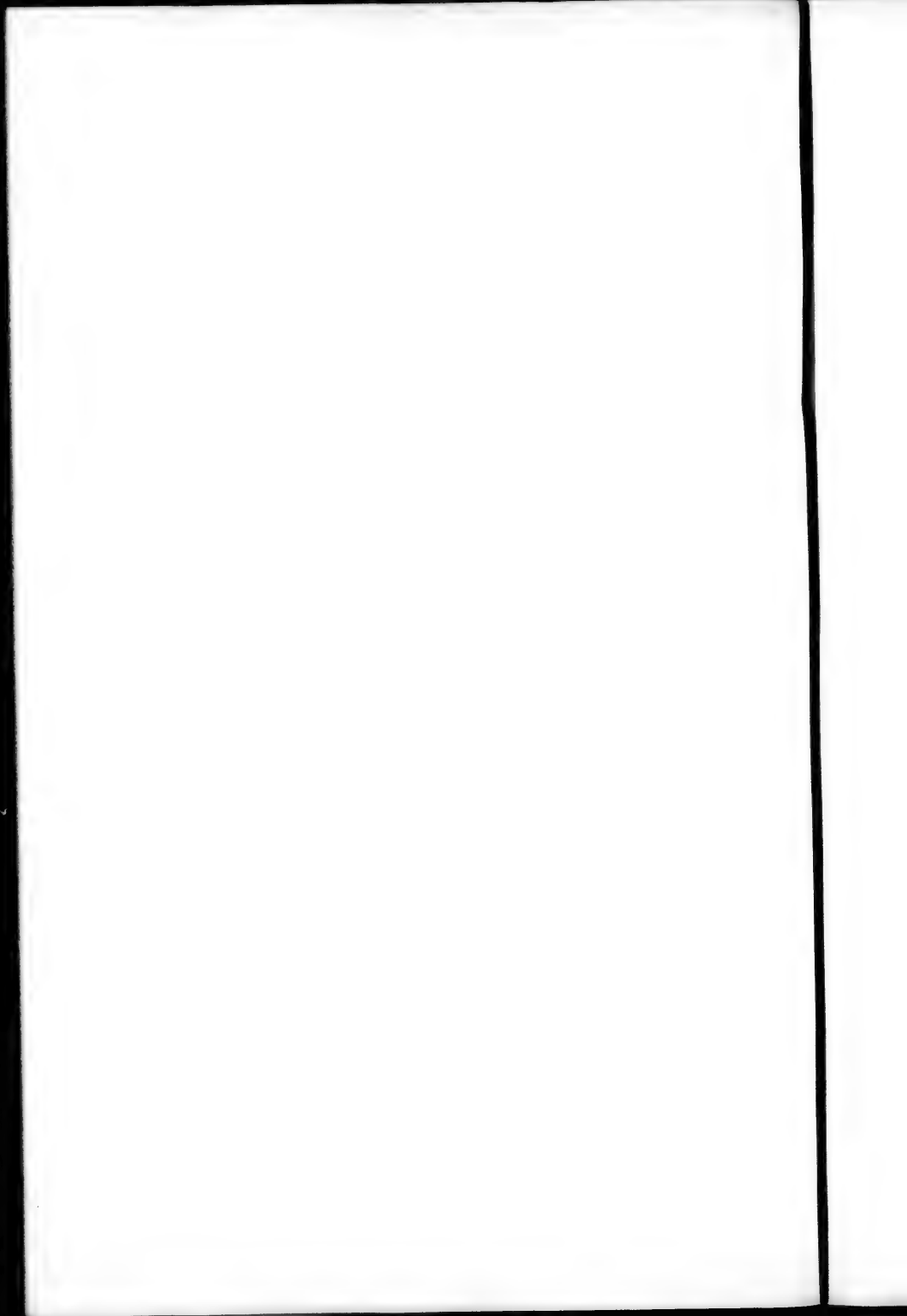
United States' Case, Appendix, vol. i, p. 242.

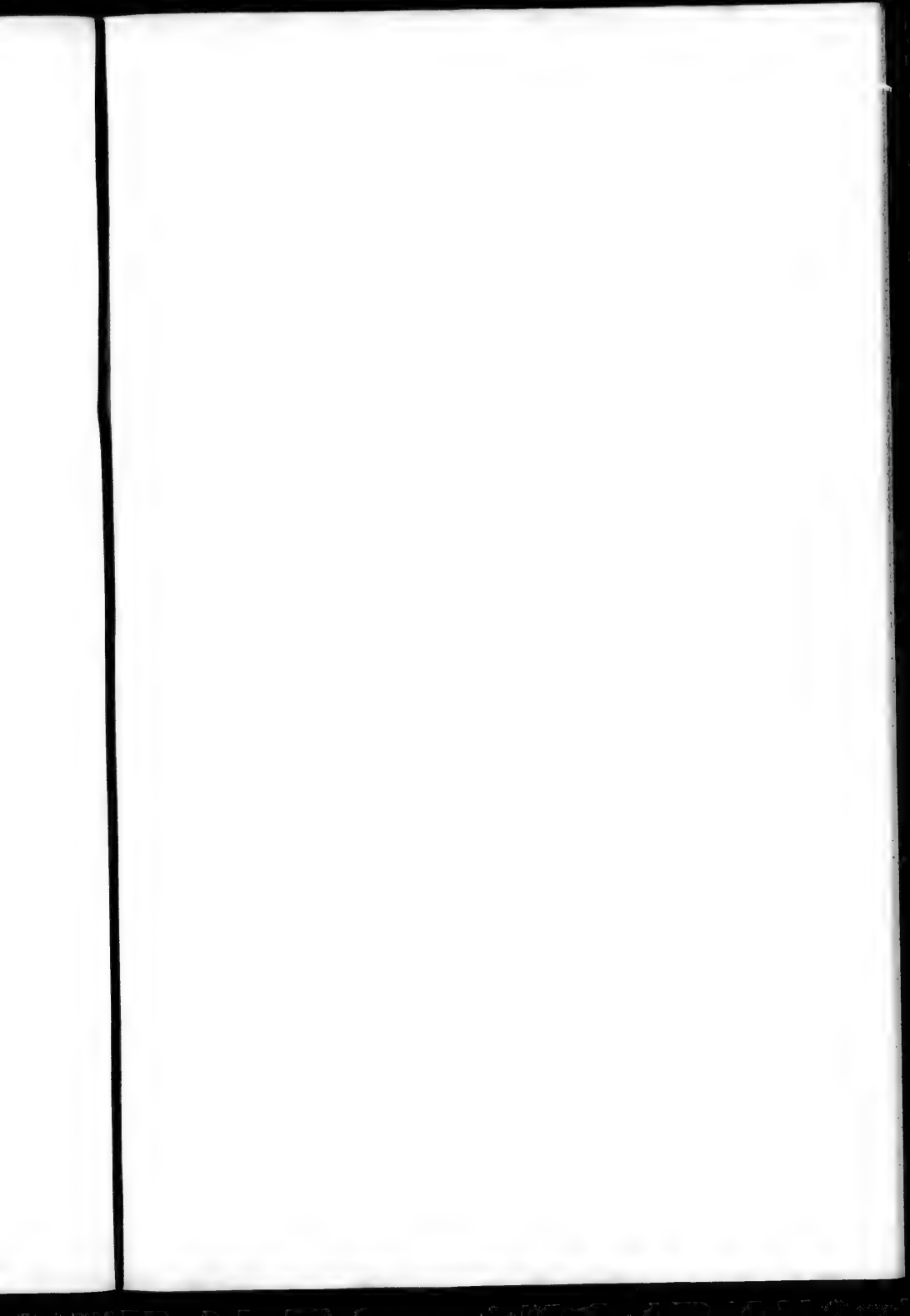
*App. II p. 11 Pacific Case
p. 7*

Great Britain's Case, Appendix, vol. ii, Parts I and II.

Ibid., Appendix, vol. ii, Part II, No. 1.

United States' Case, Appendix, vol. i, p. 133.





extent of sea thus limited he claims as shut seas ("mers fermées"). The same limits are expressly or impliedly referred to throughout the correspondence.*

Further, the contention that the words "north-west coast of America" were understood at the date of the protests, negotiations, and Treaties to be confined to the coast of America between latitude 60° or 55° and latitude 51° is conclusively negatived by the correspondence referred to in chapter 3 of the British Case, and the Russian Map which was officially communicated to the British Government.

After the completion of the Treaty with the United States in consequence of, it now appears, certain representations made by the Russian-American Company to the Imperial Government, an interview took place between Baron de Tuyl, on behalf of the Imperial Government, and Mr. Adams, the Secretary of State, when Baron de Tuyl, in accordance with the instructions of his Government, proposed to Mr. Adams that an explanatory note should be agreed to, stating that—

"it is not the intention of Russia to impede the free navigation of the Pacific Ocean. She would be satisfied with causing to be recognized, as well understood and placed beyond all manner of doubt, the principle, that

* See particularly in the correspondence between Russia and the United States:—

Mr. de Poletica to Mr. Adams, 2nd April, 1822.

Mr. Adams to Mr. Middleton, 22nd July, 1823.

Mr. Adams to Mr. Rush, 22nd July, 1823.

Memorial by Mr. Middleton, 1st December, 1823.

In the correspondence between Great Britain and Russia:—

Baron Nicolay to the Marquis of Londonderry, 31st October, 1821.

Count Nesselrode to Count Lieven, 7th October, 1821.

Messrs. F. Enderby and Melish to Board of Trade, 27th November, 1821.

Mr. G. Canning to the Duke of Wellington, 27th September, 1822.

Ship-owners' Society to Mr. G. Canning, 11th June, 1823.

Mr. Enderby to the Board of Trade, 7th February, 1824.

And in the correspondence of the Russian-American Company:—

Minister of Finance to Russian-American Company, 18th July, 1822.

(The paragraph of this letter relied upon at p. 54 of the United States' Case will be considered presently.)

Count Nesselrode to N. S. Morozov, 11th April, 1824.

Great Britain's Case, Appendix vol. iv.

United States' Case, p. 55.

United States' Case, Appendix vol. i, p. 135.

Great Britain's Case, Appendix, vol. ii, Part II, p. 4.

Ibid., p. 6.

Ibid., p. 7.

Ibid., Appendix, vol. ii, Part I, p. 1.

Ibid., p. 3.

Ibid., p. 13.

Ibid., p. 21.

Ibid., p. 36.

Ibid., p. 52.

United States' Case, Appendix, vol. ii, p. 62.

Ibid., p. 14.

beyond [i.e., north of] 59° 30' no foreign vessel can approach her coasts and her islands, nor fish nor hunt within the distance of 2 marine leagues."

This limitation of the rights granted for ten years by Article IV is explained in the note as—

"only a natural consequence of the stipulations agreed upon, for the coasts of Siberia are washed by the Sea of Okhotsk, the Sea of Kamchatka, and the Icy Sea, and not by the South Sea mentioned in the 1st Article of the Convention of the 5th (17th) April, 1824. The Aleutian Islands are also washed by the Sea of Kamchatka, or Northern Ocean."

United States' Case, Appendix I, vol. i, p. 276.

As an alternative course, Baron de Tuijl was instructed to propose a modification of the Convention, by which vessels of the United States should be prohibited from trading on the north-west coast north of latitude 57.

Ibid., p. 277.

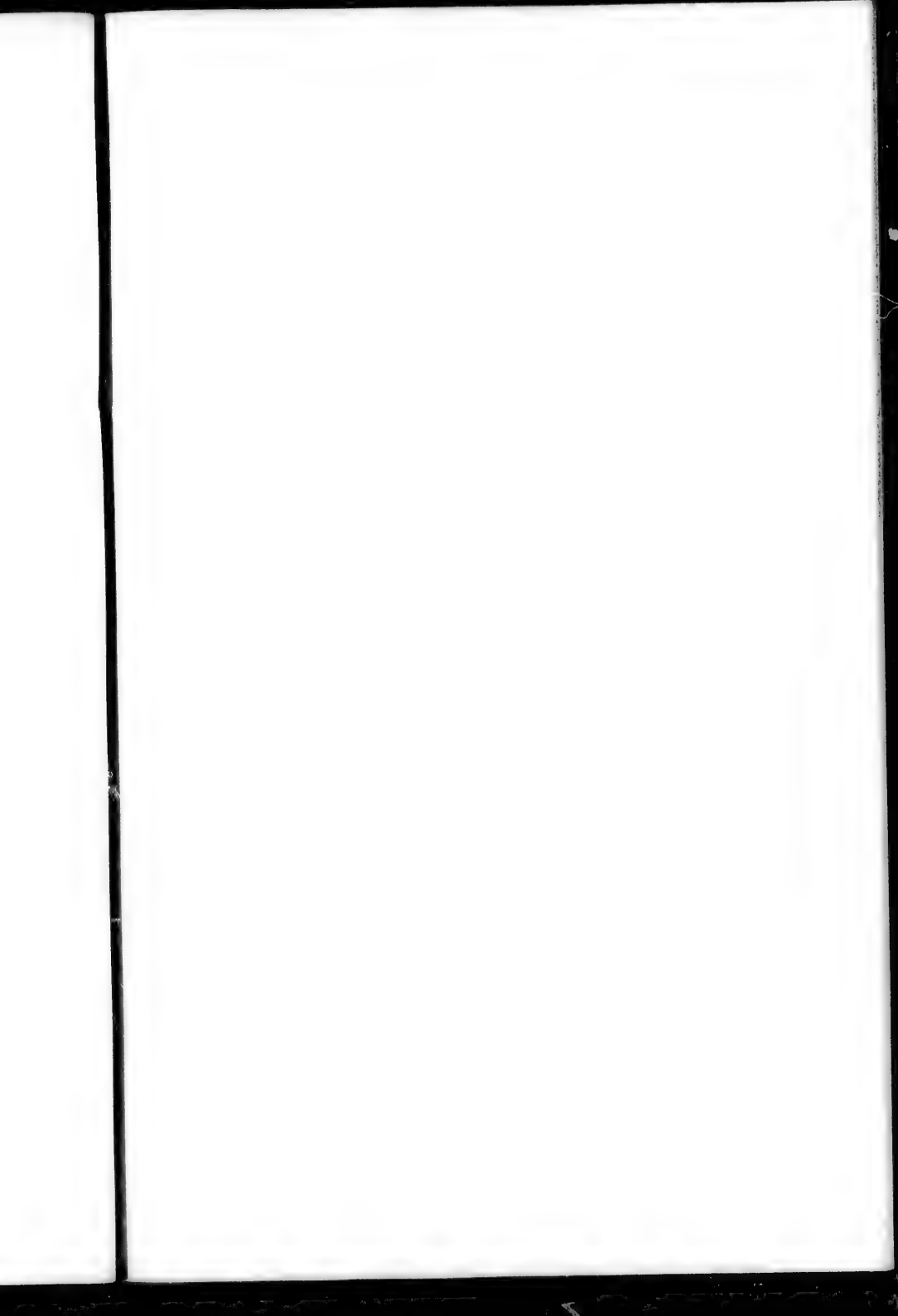
In reply to this representation, Mr. Adams informed Baron de Tuijl that a modification of the Convention could not be made otherwise than by a new Convention, and that the construction of the Convention as concluded—

"belonged to other Departments of the Government, for which the Executive had no authority to stipulate. That if on the exchange of the ratifications he should deliver to me a note of the purport of that which he now informally gave me, I should give him an answer of that import, namely, that the construction of Treaties depending here upon the Judiciary Tribunals, the Executive Government, even if disposed to acquiesce in that of the Russian Government as announced by him, could not be binding upon the Courts, nor upon this nation.* If anything affecting its construction, or, still more, modifying its meaning, were to be presented on the part of the Russian Government before or at the exchange of the ratifications, it must be laid before the Senate, and could have no other possible effect than of starting doubts, and, perhaps, hesitation, in that body, and of favouring the views of those, if such there were, who might wish to defeat the ratification itself of the Convention."

This appears to be the first and only occasion throughout the whole of the negotiations upon which an attempt was made to draw the distinction, now so much relied upon on the part of the United States, between the waters of Behring Sea and those of the North Pacific.

The origin of this distinction therefore deserves careful consideration.

* This passage is omitted by Mr. Blaine in his quotation from Mr. Adams' Diary (United States' Appendix, vol. i, p. 277). The passage is important, inasmuch as it is implied that the United States' Government was not disposed to acquiesce in the proposed construction of the Treaty.



It is clear from Baron Tuyll's statement to Mr. Adams that upon the conclusion of the Convention of the 5th (17th) April, 1824, the Russian-American Company were extremely dissatisfied with its purport.

United States Case, Appendix i vol. i, p. 276.

A Committee was appointed by the Emperor to examine the observations made by the Company.

Correspondence of Russian-American Company, No. 4 (British translation)

From the "Protocol" of this Committee, dated the 21st July, 1824, it appears that among the objections of the Company the two following points were raised:—

1. It was thought that Article I of the Convention permitted citizens of the United States to resort to the coast upon points not already occupied for the purpose of trading with the natives upon the shores of Siberia and the Aleutian Islands.*

Ibid., Inclosure ii No. 14 para. 7 (British translation)

2. The Company desired to confine the right of fishing and trading granted to the United States for ten years by Article IV, to the coast south of Cross Sound.

It was to meet the first of these points that the argument that Behring Sea is not part of the Pacific Ocean, or South Sea, was first developed.

Upon the second point, the Committee expressed the opinion that Yakutat or Behring Bay was—

Ibid., Inclosure ii No. 14 (British translation)

"situated in a latitude [59° 30' north] where the rights of Russia have never been disputed, and this important circumstance has permitted it to be included in the general declaration with regard to the Aleutian Islands and other northern regions."

As to Cross Sound, the Committee agreed that—

"as it is situated under latitude 57° north, and, consequently, within the limits of those islands and territories the right of Russia to which has been disputed, the same principle cannot be applied to it."

The Committee therefore suggested that General de Tuyll should be instructed to use his best endeavours to persuade the Washington Cabinet to accept Cross Sound as the limit, without insisting on the point, if that Cabinet should object to it.

Upon the subject of the Report of this

* *Note.*—The shores of America "and the intervening seas" (twice mentioned in this paragraph as printed in United States' Case, Appendix, vol. i, p. 19) are not mentioned in the original Russian text. Compare Baron Tuyll's statement, as reported by Mr. Adams (United States' Case, Appendix, vol. i, p. 276).

Committee, and the negotiations between Baron de Tuyl and Mr. Adams, which resulted from it, the following points are to be noted:—

1. That the interpretation of the words "Pacific Ocean or South Sea," in Article I of the Convention, upon which the Government of the United States now base their argument, was first placed upon these words *after* the conclusion of the Convention, and with the express purpose of reconciling the Directors of the Russian-American Company to the terms of that Article.

2. That Mr. Adams declined the overtures of Baron de Tuyl, and that the Convention was finally ratified in its original terms, without explanation or modification. The verbal assurance by Mr. Adams, that—

"our merchants would not go to trouble the Russians on the coast of Siberia, or north of the 57th degree of latitude,"

in no way affected the meaning of the Convention as signed.

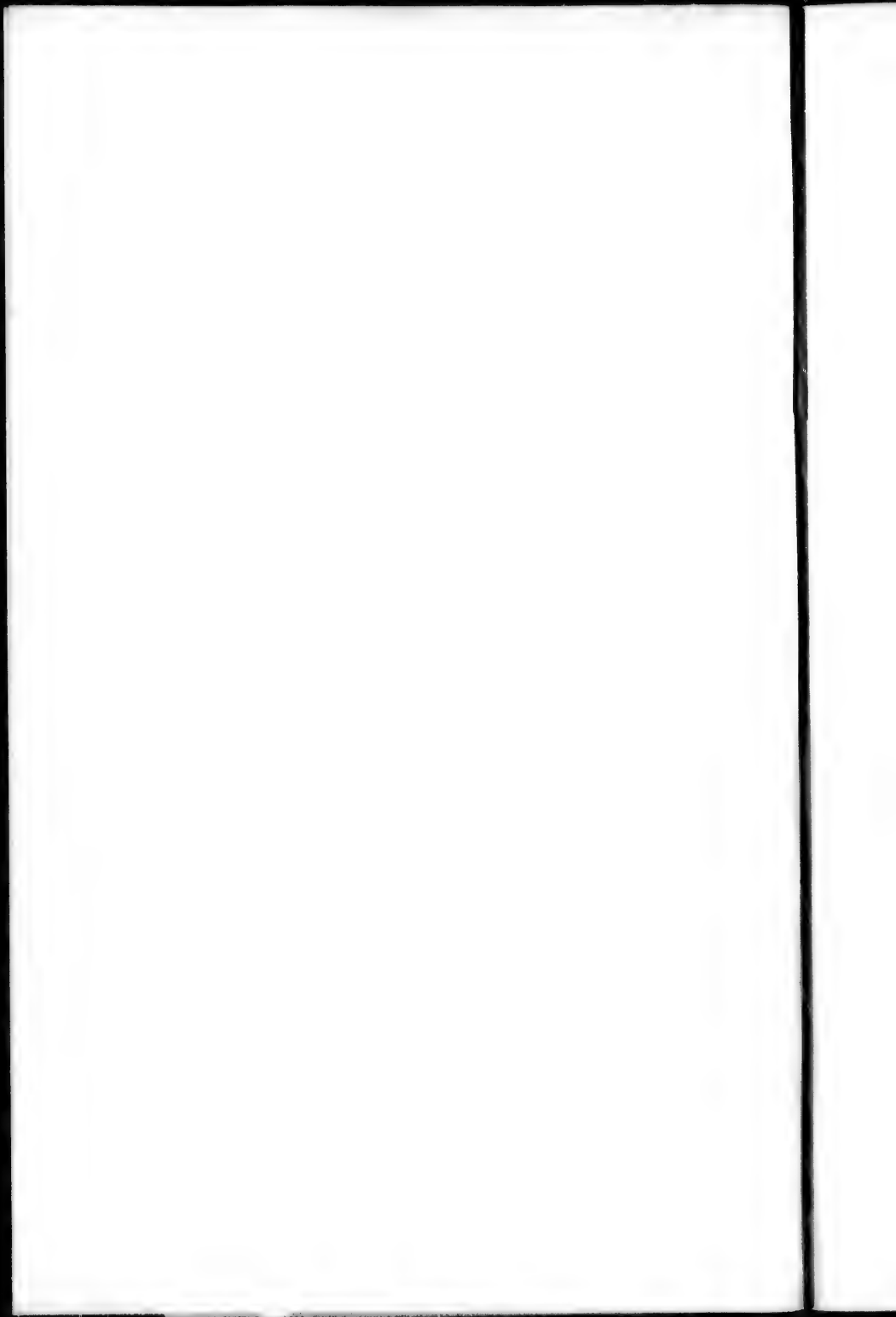
3. That the distinction in respect of jurisdiction attempted to be drawn by Russia was not between Behring Sea and the rest of the Pacific, but between the coast-line north and south of Yakutat Bay, in latitude $59^{\circ} 30'$, and this distinction was based on a supposed occupation of territory.

4. That the construction contended for by Baron Tuyl would have denied to citizens of the United States the right to visit either the southern or the northern shores of the Aleutian Islands, or any part of the Pacific coast beyond latitude $59^{\circ} 30'$, or to approach within 2 marine leagues of these coasts.

5. That neither the Report of the Committee of the 21st July, 1824, referred to at p. 55 of the United States' Case, nor the explanatory note submitted to Mr. Adams by Baron de Tuyl, were ever communicated to Great Britain.

6. That no distinction is drawn in the Treaty with Great Britain in 1825 between Behring Sea and the rest of the Pacific Ocean, though the attention of the Russian Government had been forcibly called to the point by the remonstrances of the Russian-American Company, upon the conclusion of the Treaty with the United States.

Finally, there is evidence that, in the opinion of Mr. Middleton on the one hand, and of Count Nesselrode on the other, the Treaty with the United States was not modified or affected in any way by the negotiations instituted by Baron Tuyl. This appears from the following extract



from the despatch of Mr. S. Canning to Mr. G. Canning, dated the 3rd (15th) April, 1825.

Great Britain's
Case, Appendix II,
Part I, p. 81.

"Referring to the American Treaty, I am assured, as well by Count Nesselrode as by Mr. Middleton, that the ratification of that instrument was not accompanied with any explanations calculated to modify or affect in any way the force and meaning of its Articles. But I understand that, at the close of the negotiation of that Treaty, a Protocol, intended by the Russians to fix more specifically the limitations of the right of trading with their possessions, and understood by the American Envoy as having no such effect, was drawn up and signed by both parties. No reference whatever was made to this paper by the Russian Plenipotentiaries in the course of my negotiation with them; and you are aware, Sir, that the Articles of the Convention which I concluded depend for their force entirely on the general acceptance of the terms in which they are expressed."

To the above may be added the account of the same transaction which is given by the Russian writer Tikhmenieff:—

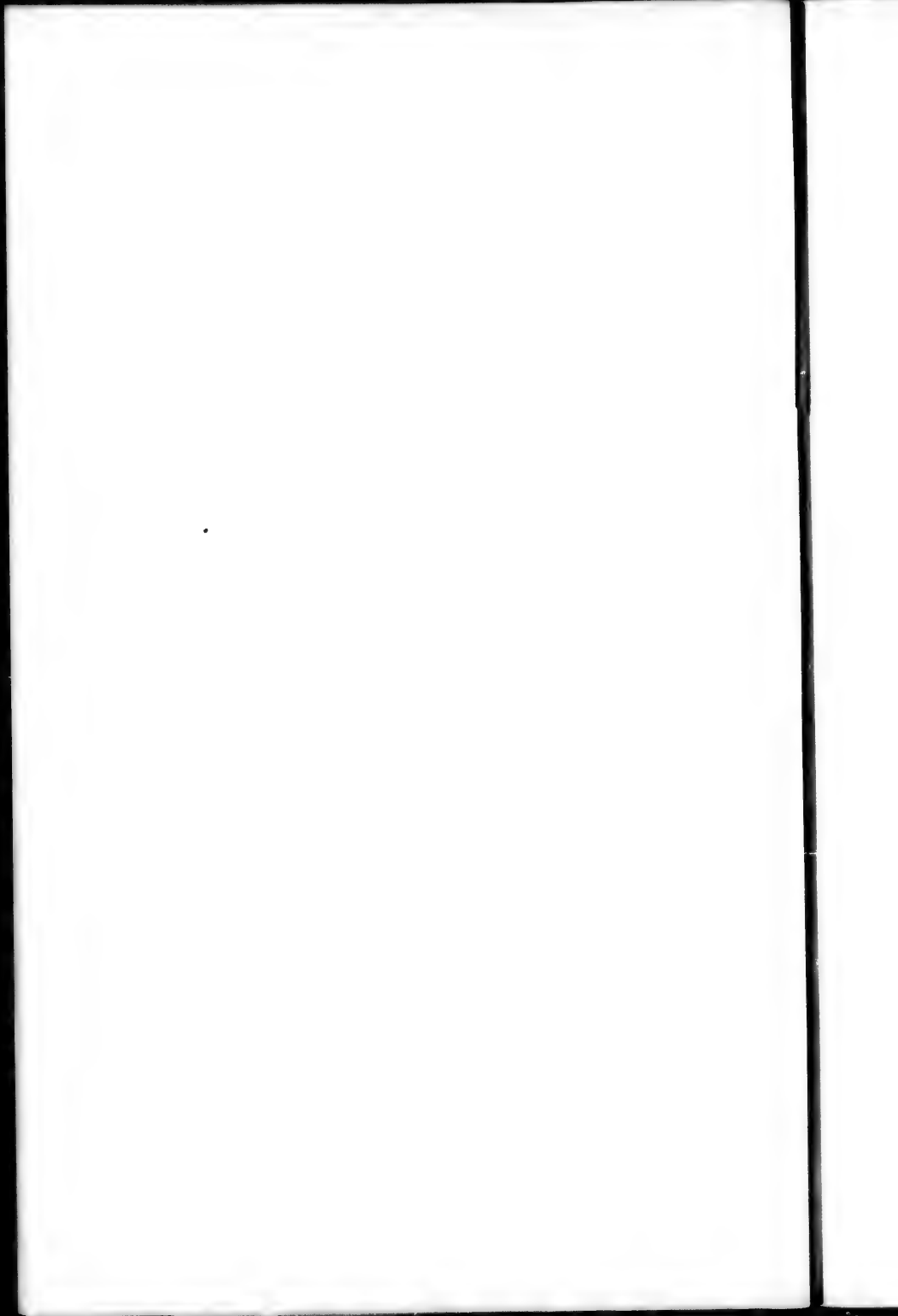
Ibid., Appendix I,
p. 36.

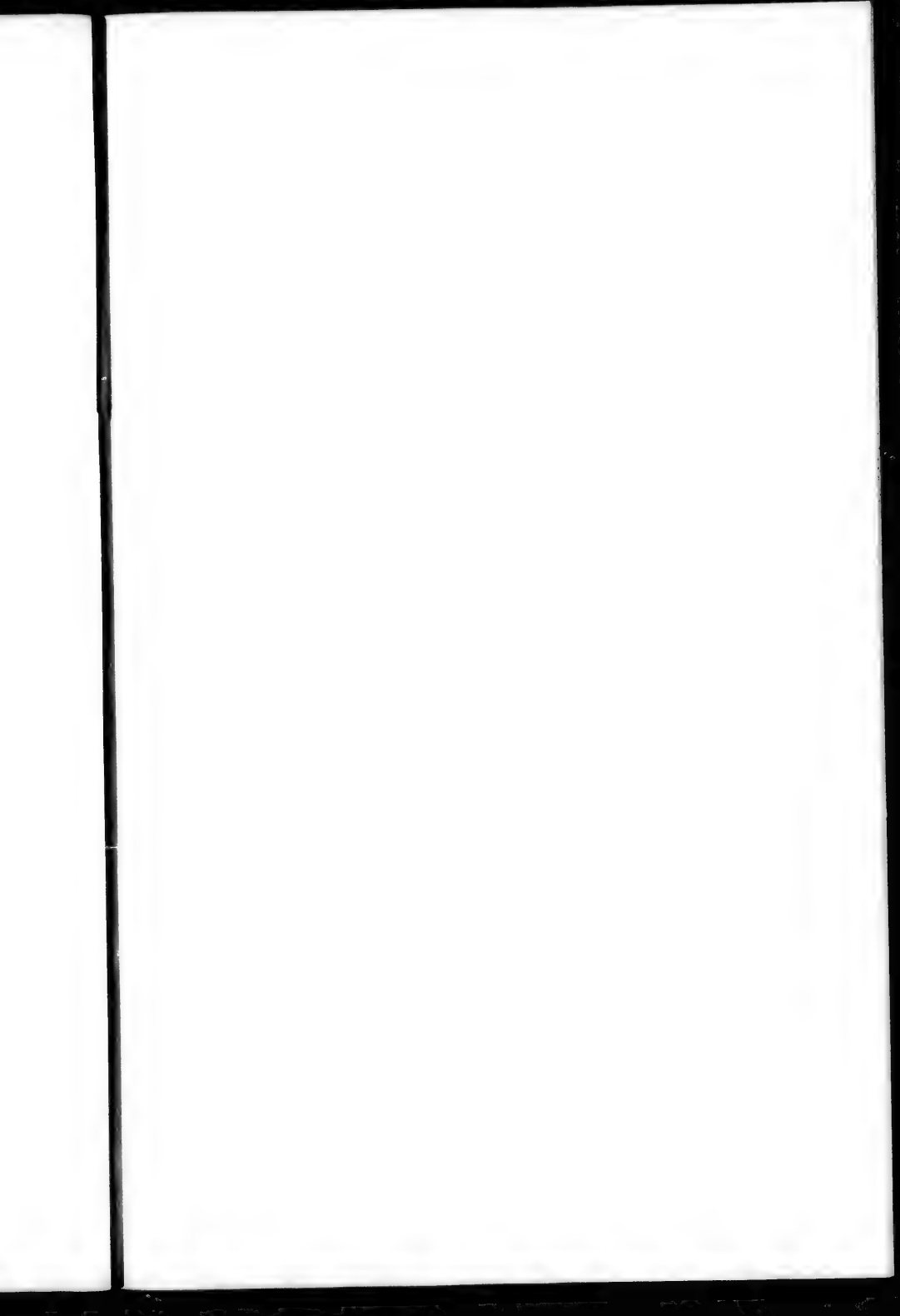
"As the Convention had not yet been ratified, the Emperor, on the representation of the Company that they would be injured by that part of the Convention to which we have referred, ordered inquiry to be made into the matter by a Special Commission. In the Protocol of the Commission, which was approved by the Emperor, it was declared, *inter alia*, that the provision of the Convention granting to the citizens of the United States the right to fish in the waters of the Colony, and to trade with the inhabitants of the coast, must not be understood as giving them a right to approach the coast of Eastern Siberia, and the Aleutian and Kurile Islands, which had long been recognized by the other Powers as being under the exclusive dominion of Russia, and that that provision only applied to the disputed territory on the north-west coast of America, between 54° 40' and 55°."

In consequence of this declaration, the Head of the Foreign Office and the Commission were of opinion that in order to safeguard the rights of the Company, and to obviate the possibility of the Convention being wrongly interpreted, the Russian Minister to the United States should be instructed to make a formal explanatory declaration on the occasion of the exchange of the ratifications of the Convention. The Minister reported that he did not see his way to carry out these instructions, and that the only way in which he could explain the provision in question to the Washington Cabinet was by a verbal note. He added that a formal declaration might give rise to serious disputes, prevent the ratification of the Convention, and produce an effect which was not intended by arousing suspicions which would otherwise never be entertained. The Convention was accordingly ratified.

United States'
Case, p. 55.

It is asserted, however, at p. 55 of the United States' Case that—





"to fully appreciate the significance of the foregoing declaration [of the Committee], it must be remembered that it was made shortly before the signing of the Treaty with Great Britain, in which, therefore, the Russian negotiators did not consider it necessary (any more than they had considered it necessary in the former) to declare that Behring Sea was not a part of the Pacific Ocean, in which latter the right of free fishing was recognized to exist."

This is followed by the assertion, already quoted, that—

"Neither in the protests, negotiations, or Treaties is any reference found to Behring Sea, and it must be conceded, from a study of those instruments and the subsequent events, that the question of jurisdictional rights over its waters was left where it had stood before the Treaties, except that the exercise of these rights by Russia had now, through these Treaties, received the implied recognition of two great nations."

United States' Case, p. 56.

These assertions are best answered by the following extracts from the Diplomatic correspondence, which are given to supplement the passages already quoted in Chapters II and III of the Case for Great Britain, and the references given at p. of this Counter-Case:—

Correspondence between Russia and the United States.

In the letter of the 22nd July, 1823, from Mr. Adams to Mr. Middleton, the writer states that—

"the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51° north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast. *The United States can admit no part of these claims.* Their right of navigating and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the 55th degree of latitude, and have no existence on the Continent of America."

Mr. Adams inclosed a draft Convention, to which he authorized Mr. Middleton to agree, and it is to be noted that Article I of this draft embodies the identical terms which afterwards became the 1st Article of the Convention of the 17th April, 1824. Mr. Adams, therefore, whose emphatic views have just been quoted, was

himself the draftsman of that Article, and though he appears to have adopted the terms of the Spanish Treaty with Great Britain of 1790 as a convenient precedent, there can be no doubt that he regarded its terms as co-extensive with the pretensions of the Ukase.

Mr. Middleton's opinion upon the subject of the Ukase, with its claim to close even Behring Strait, clearly appears in his Memorial of the 1st December, 1823, quoted at pp. 50 and 64 of the Case for Great Britain. He considered the measure to be without precedent and inadmissible. Nevertheless, his Memorandum, presented at the Fourth Conference of the Plenipotentiaries, is more than once quoted in the correspondence as establishing that the contention of the United States in these negotiations had no reference to Behring Sea. His reference to the coast between the 50th and 60th degrees of north latitude is alleged to define the limits of the coast in dispute. It will be seen, however, that at the date of this Memorandum, Article I, which dealt with the maritime claim of Russia, had been agreed upon, and the Memorandum was obviously prepared in view of disputes as to the territorial claims of Russia. Article I had further disposed of the dispute as to the right of resorting to the coast upon points not already occupied, and the remaining Articles related only to coasts not covered by Article I. It was therefore essential that Mr. Middleton should clearly define the coasts to which a right by occupation could fairly be claimed.

Upon this point he had been expressly instructed that the United States could—

"in nowise admit the right of Russia to exclusive territorial possession on any part of the Continent of North America south of the 60th degree of north latitude."

and he had himself prepared for the Emperor's inspection a Confidential Memorial, in which he states that the only Russian establishment on this side of the 60th degree was that on the Island of Sitka.

On the other hand, the 50th parallel was regarded as approximately the northernmost point to which the territorial right of the United States extended.

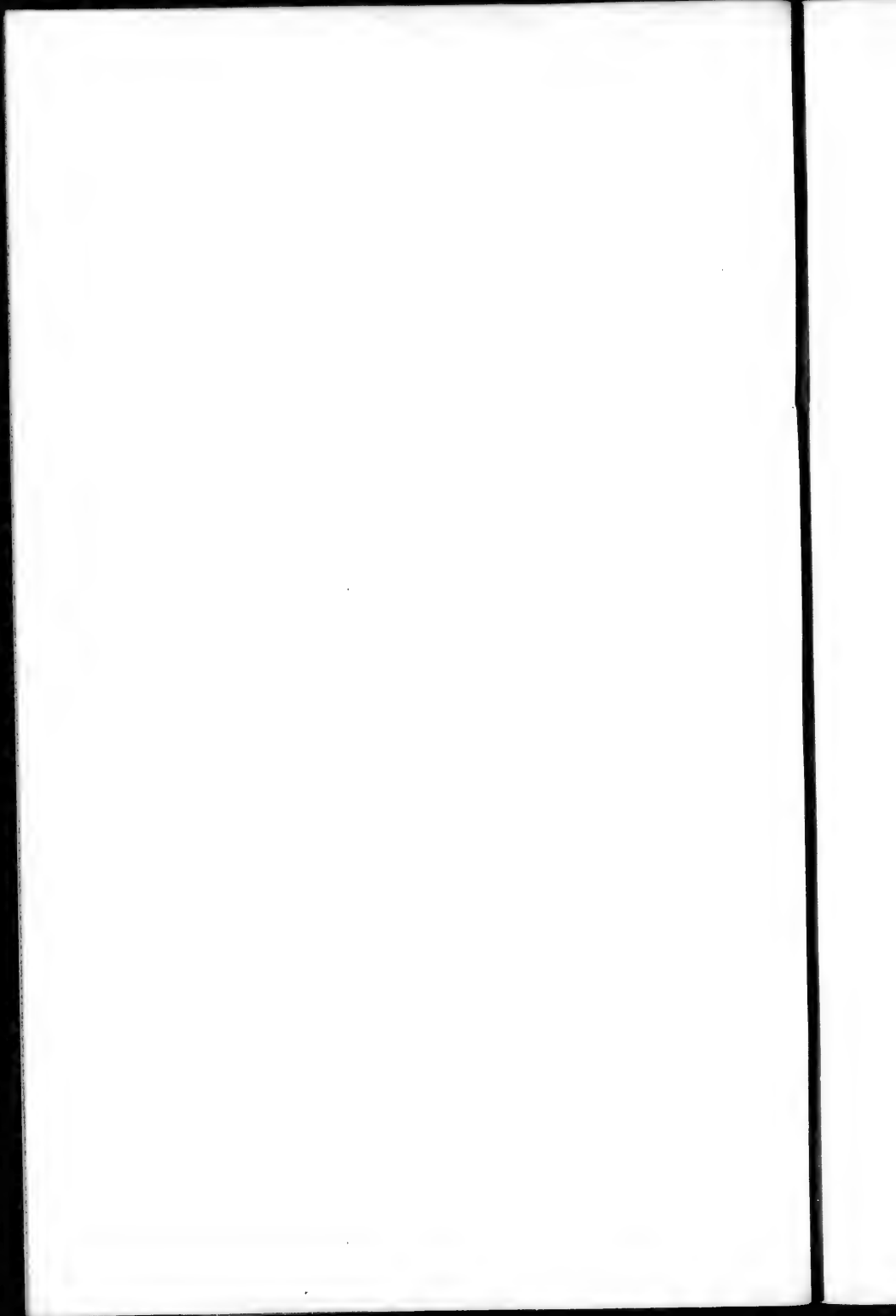
Mr. Middleton therefore rightly mentioned the space between the 50th and 60th parallel as the region within which he was authorized to discuss the question of territorial rights, but his Memo-

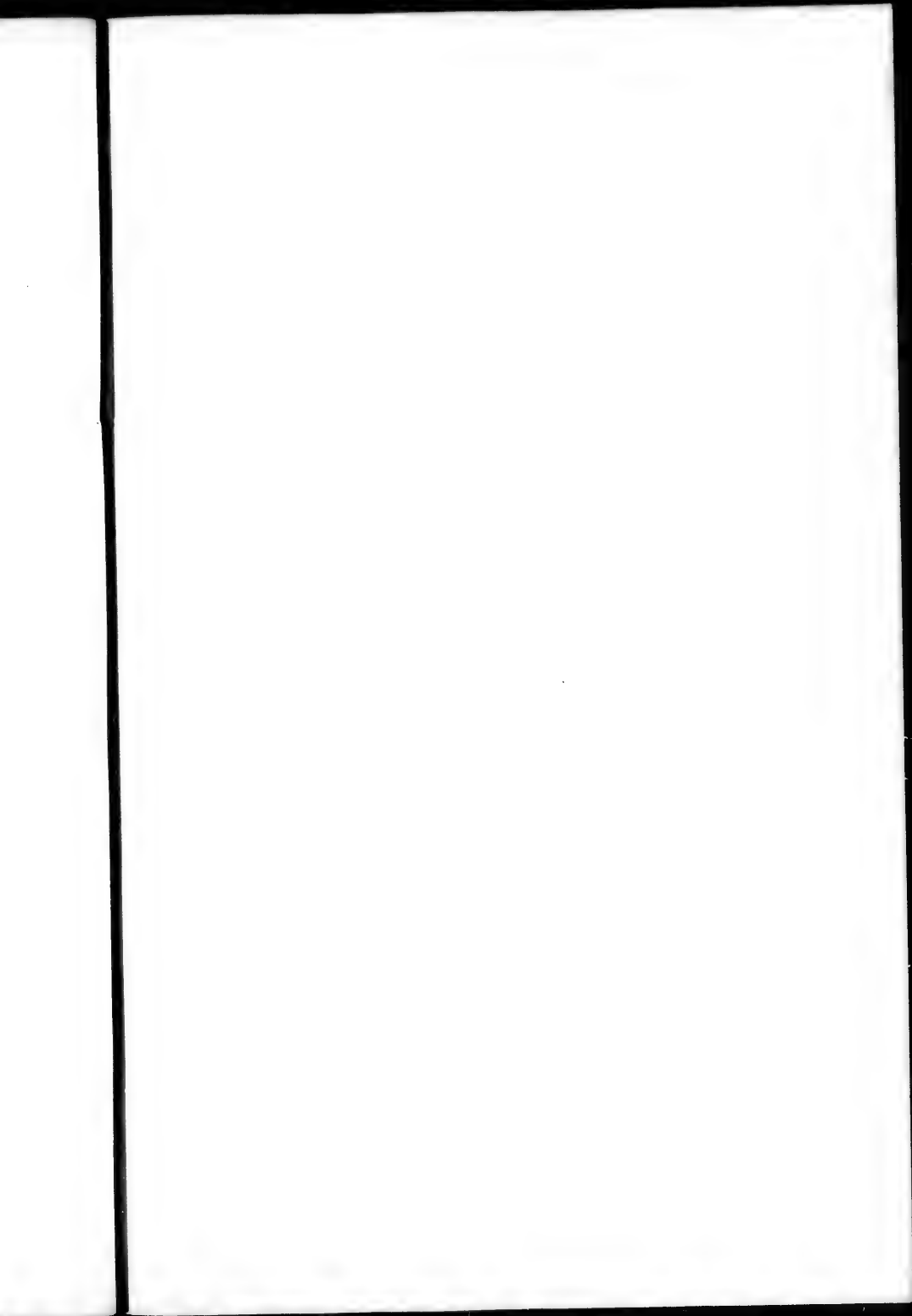
United States' Case, Appendix, vol. i, pp. 229 and 270.

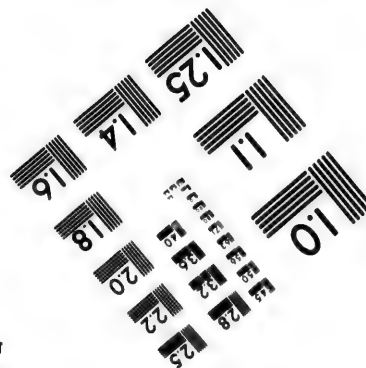
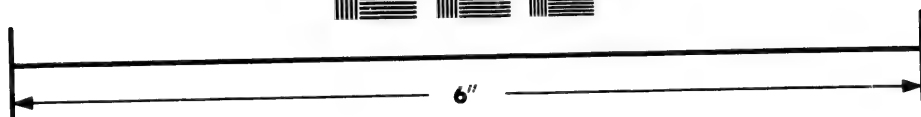
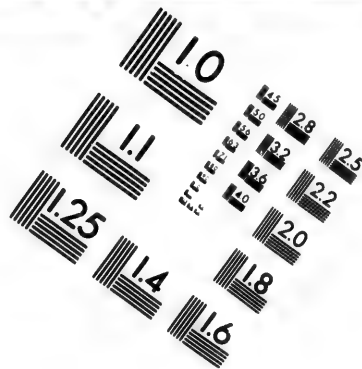
American State Papers, Foreign Relations, vol. v, p. 446.

Ibid., p. 452

Ibid., pp. 437-448.







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randum in no way shows that his negotiations had reference only to these territorial rights in this particular region, and to nothing further.

Correspondence between Great Britain and Russia.

Mr. G. Canning, writing to Sir C. Bagot on the 12th July, 1824, inclosed the draft of a "Projet" of Convention, which Sir C. Bagot was authorized to sign.

This "Projet" contained the following Articles:—

"ARTICLE I.

"It is agreed between the High Contracting Parties that their respective subjects shall enjoy the right of free navigation along the whole extent of the Pacific Ocean, comprehending the sea within Behring's Straits, and shall neither be troubled nor molested in carrying on their trade and fisheries, in all parts of the said ocean, either to the northward or southward thereof.

"It being well understood that the said right of fishery shall not be exercised by the subjects of either of the two Powers nearer than 2 marine leagues from the respective possessions of the other."

"ARTICLE V.*

"With regard to the other parts of the north-west coast of America, and of the islands adjacent thereto, belonging to either of the two High Contracting Parties, it is agreed that, for the space of years from the April, 1824, their respective vessels, and those of their subjects, shall reciprocally enjoy the liberty of visiting, without hindrance, the gulfs, havens, and creeks of the said coast, in places not already occupied, for the purposes of fishery and of commerce with the natives of the country.

"It being understood:—

"1. That the subjects of either of the High Contracting Parties shall not land at any spot where there may be an establishment of the other, without the permission of the Governor or other authority of the place, unless they should be driven thither by stress of weather or other accidents.

"2. That the said liberty of commerce shall not include the trade in spirituous liquors, in fire-arms, swords, bayonets, &c., gunpowder, or other warlike stores. The High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or transferred, in any matter whatever, to the natives of the country."

Great Britain's
Case, Appendix,
vol. ii, Part I,
p. 61.

"ARTICLE I.

"Il est convenu entre les Hautes Parties Contractantes que leurs sujets respectifs navigueront librement dans toute l'étendue de l'Océan Pacifique, y comprise la Mer au dedans du Détroit dit de Behring, et ne seront point troublés ni molestés en exerçant leur commerce et leurs pêcheries, dans toutes les parties du dit océan, tant au nord qu'au sud.

"Bien entendu, que la dite liberté de pêche ne sera exercée par les sujets de l'une des deux Puissances qu'à la distance de 2 lieues maritimes des possessions respectives de l'autre."

"ARTICLE V.*

"Par rapport aux autres parties des côtes du continent de l'Amérique du nord-ouest, et des isles qui l'avoisinent, appartenantes à l'une et à l'autre des deux Hautes Parties Contractantes, il est convenu que pendant l'espace de dix ans à compter du Avril, 1824, leurs vaisseaux respectifs, et ceux de leurs sujets, pourront réciproquement fréquenter, sans entrave, les golphes, havres, et criques des dites côtes, dans des endroits non déjà occupés, afin d'y faire la pêche et le commerce avec les naturels du pays.

"Bien entendu:—

"1. Que partout où il se trouvera un établissement de l'une des Hautes Parties Contractantes, les sujets de l'autre ne pourront y aborder, sans la permission du Commandant ou autre préposé de cet endroit, à moins qu'ils n'y soient forcés par tempêtes ou quelque autre accident.

"2. Que la dite liberté de commerce ne comprendra point celui des liqueurs spiritueuses, ni des armes à feu, des armes blanches, de la poudre à canon, ou d'autres espèces de munitions de guerre. Tous lesquels articles les deux Puissances s'engagent réciproquement de ne point laisser vendre ni transférer, en manière quelconque, aux indigènes de ces pays."

* Articles II and III had dealt with the "lisière de côte," which was to form the boundary of the Russian possessions, and Article IV with the Port of Sitka.

Great Britain's
Case, Appendix,
vol. ii, Part I,
p. 66.

The "Projet" was communicated to Count Lieven, the Russian Ambassador in London, who demurred to Article I as being foreign to the special object of the negotiation, and as exposing the Russian possessions in Asia in the Frozen Ocean to visits of foreign vessels. He does not seem to have raised any objection to the "Projet" on the ground of any special maritime rights of Russia over Behring Sea as distinguished from the rest of the Pacific. Mr. Canning wrote to Sir C. Bagot the letter already quoted at pp. 64 and 65 of the Case.

The Russian Plenipotentiaries delivered to Sir C. Bagot in August 1824 (subsequently to the meeting of the Committee already referred to) a "Contre-Projet," containing the following Articles:—

"ARTICLE V.

Ibid., p. 69.

"Les Hautes Puissances Contractantes stipulent en outre que leurs sujets respectifs navigueront librement, sur toute l'étendue de l'Océan Pacifique, tant au nord qu'au sud, sans entrave quelconque, et qu'ils jouiront du droit de pêche en haute mer, mais que ce droit ne pourra jamais être exercé qu'à la distance de 2 lieues marines des côtes ou possessions, soit Russes, soit Britanniques.

"ARTICLE VI.

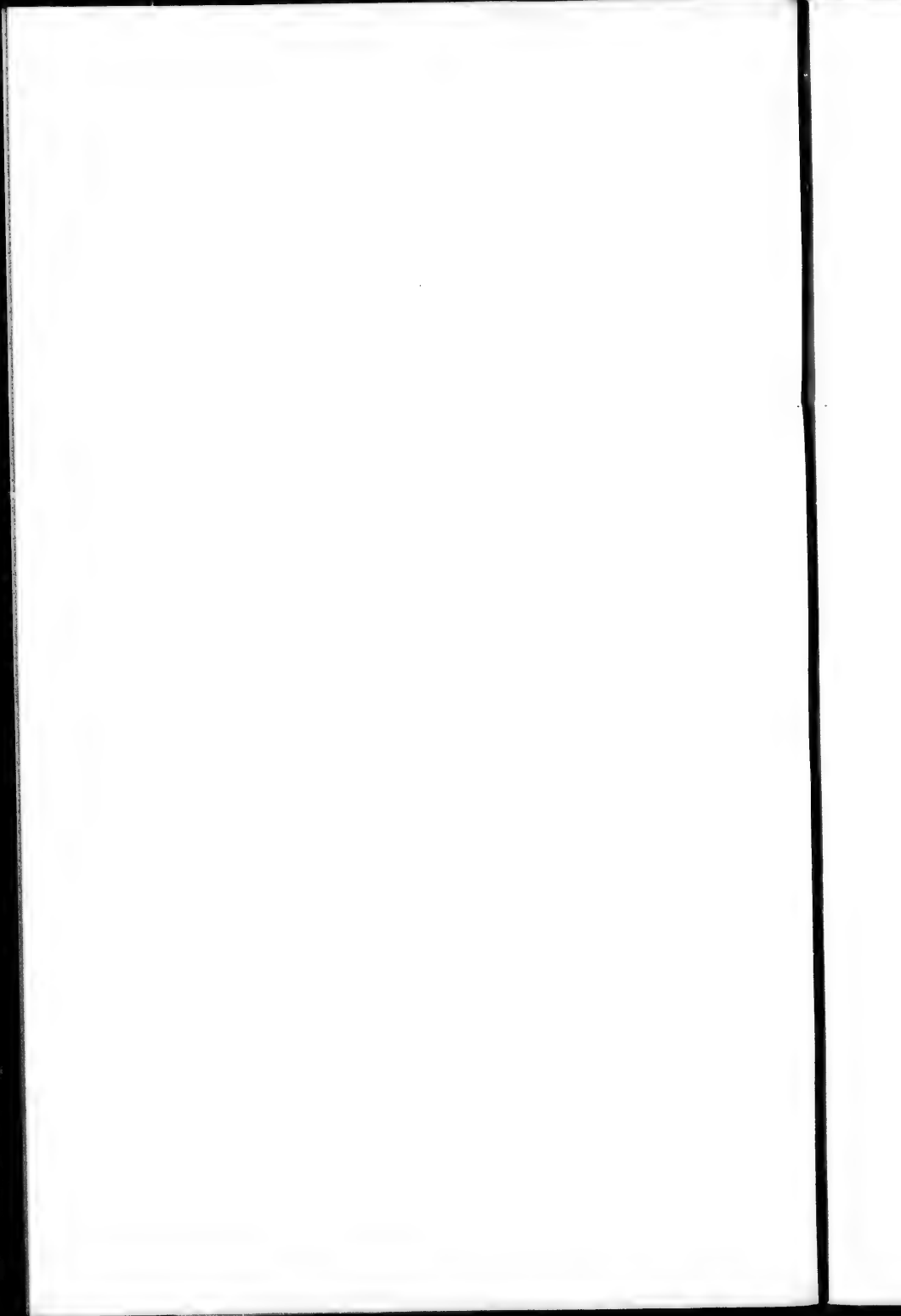
Ibid., p. 70

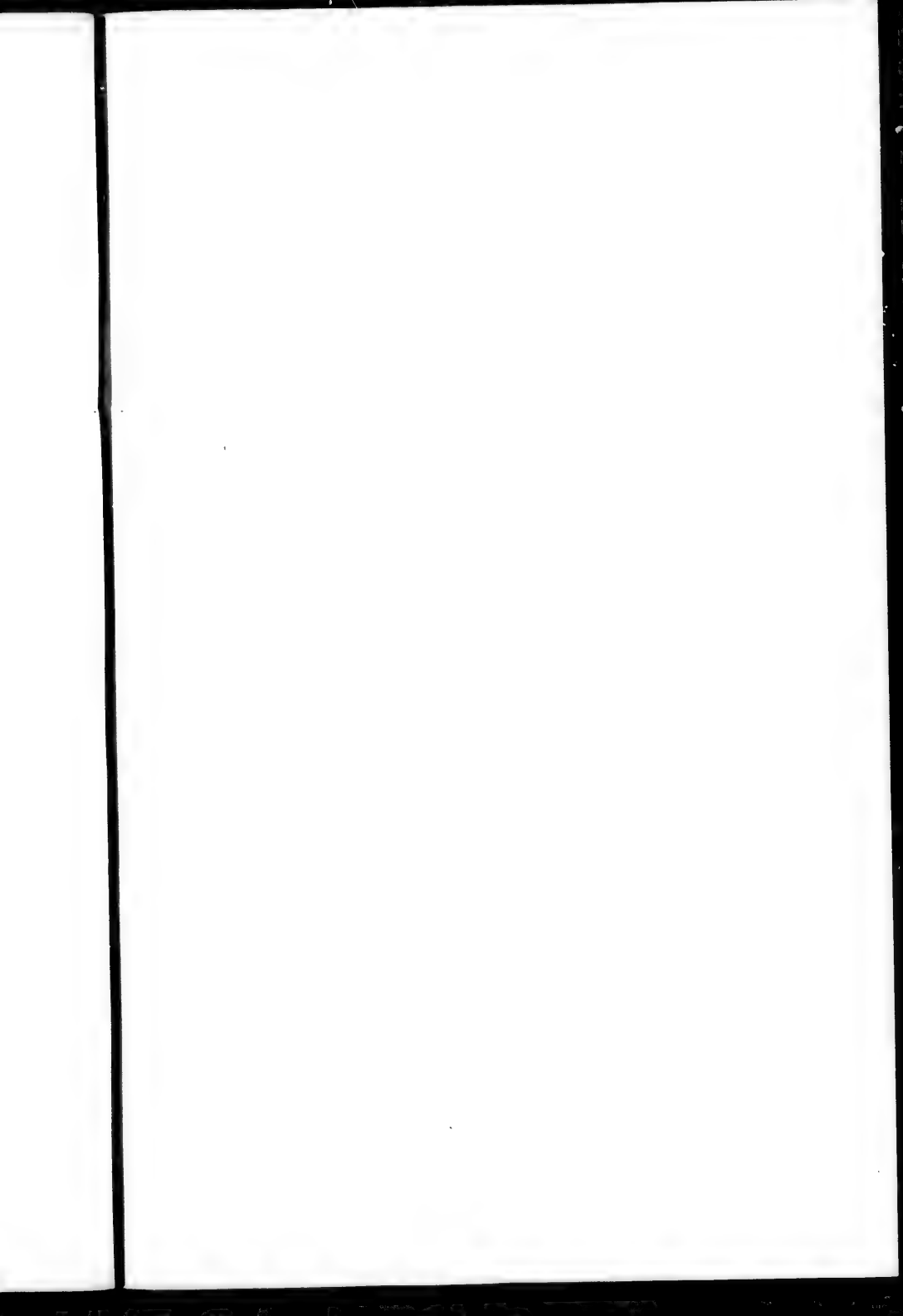
"Sa Majesté l'Empereur de Toutes les Russies, voulant même donner une preuve particulière de ses égards pour les intérêts des sujets de Sa Majesté Britannique et rendre plus utile le succès des entreprises qui auraient pour résultat de découvrir un passage au nord du Continent Américain, consent à ce que la liberté de navigation mentionnée en l'Article précédent s'étende sous les mêmes conditions, au Détroit de Behring et à la mer située au nord de ce détroit."

Ibid., p. 67.

The negotiations, however, were broken off, as reported by Sir C. Bagot, who wrote that on certain points differences had arisen which appeared to be irreconcilable.

One of the points on which the Russian Plenipotentiaries refused to yield was the proposal, embodied in Article V of the British "Projet," in so far as it permitted British subjects to visit, for a stated period, the gulfs, havens, and creeks





in places not already occupied on the north-west coast of America from 60° north latitude to Behring Straits. This coast they declared to be the absolute and undisputed territory of His Imperial Majesty, and they added that it was not the intention of His Imperial Majesty to grant to any Power whatever for any period of time the liberty which was required.

But the stipulation for the free navigation of the high seas, which was afterwards embodied in Article I of the Treaty, was not one of the points upon which differences arose.

The Russian Plenipotentiaries, like Count Lieven, seem to have raised no objection to the British proposal, on the ground that Russia possessed exceptional rights over the non-territorial waters of Behring Sea.

Article VI of their "Contre-Projet" indicates that they had no claim to exclude foreign vessels from waters south of the Arctic Ocean and Behring Strait. This Article purports, as a favour, to waive any such rights in respect of the last-mentioned ocean and strait, but Behring Sea is not named.

At this stage the negotiations were broken off.

Sir C. Bagot reminded the Russian Plenipotentiaries that the maritime jurisdiction assumed by Russia in the Pacific, which he had hoped to see revoked in the simplest and least unpleasant manner by mixing it with a general adjustment of other points, remained, by the breaking off of the negotiations, still unretracted; and that his Government would probably be of opinion that, upon that part of the question, some arrangement must yet be entered into.

With reference to the sixth Article of the "Contre-Projet," he gave the Russian Plenipotentiaries distinctly to understand that neither the British Government nor those of the other Maritime Powers of the world would, in his opinion, be likely to accept the free navigation of Behring Straits as a concession on the part of Russia.

The negotiations were resumed in December 1824 by Mr. S. Canning, who received his instructions from Mr. G. Canning, under date the 8th December, 1824, as follows:—

"It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the Continent of America, but the preten-

Great Britain's
Case, Appendix,
vol. ii, Part I,
pp. 73, 74.

sions of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepented without compelling us to take some measure of public and effectual remonstrance against it.

"You will therefore take care, in the first instance, to repress any attempt to give this change to the character of the negotiation, and will declare without reserve that the point to which alone the solicitude of the British Government and the jealousy of the British nation attach any great importance is the doing away (in a manner as little disagreeable to Russia as possible) of the effect of the Ukase of 1821.

"That this Ukase is not acted upon, and that instructions have been long ago sent by the Russian Government to their cruisers in the Pacific to suspend the execution of its provisions, is true; but a private disavowal of a published claim is no security against the revival of that claim. The suspension of the execution of a principle may be perfectly compatible with the continued maintenance of the principle itself, and when we have seen in the course of this negotiation that the Russian claim to the possession of the coast of America down to latitude 59 rests in fact on no other ground than the presumed acquiescence of the nations of Europe in the provisions of an Ukase published by the Emperor Paul in the year 1800, against which it is affirmed that no public remonstrance was made, it becomes us to be exceedingly careful that we do not, by a similar neglect, on the present occasion, allow a similar presumption to be raised as to an acquiescence in the Ukase of 1821.

"The right of the subjects of His Majesty to navigate freely in the Pacific cannot be held as matter of indulgence from any Power. Having once been publicly questioned, it must be publicly acknowledged.

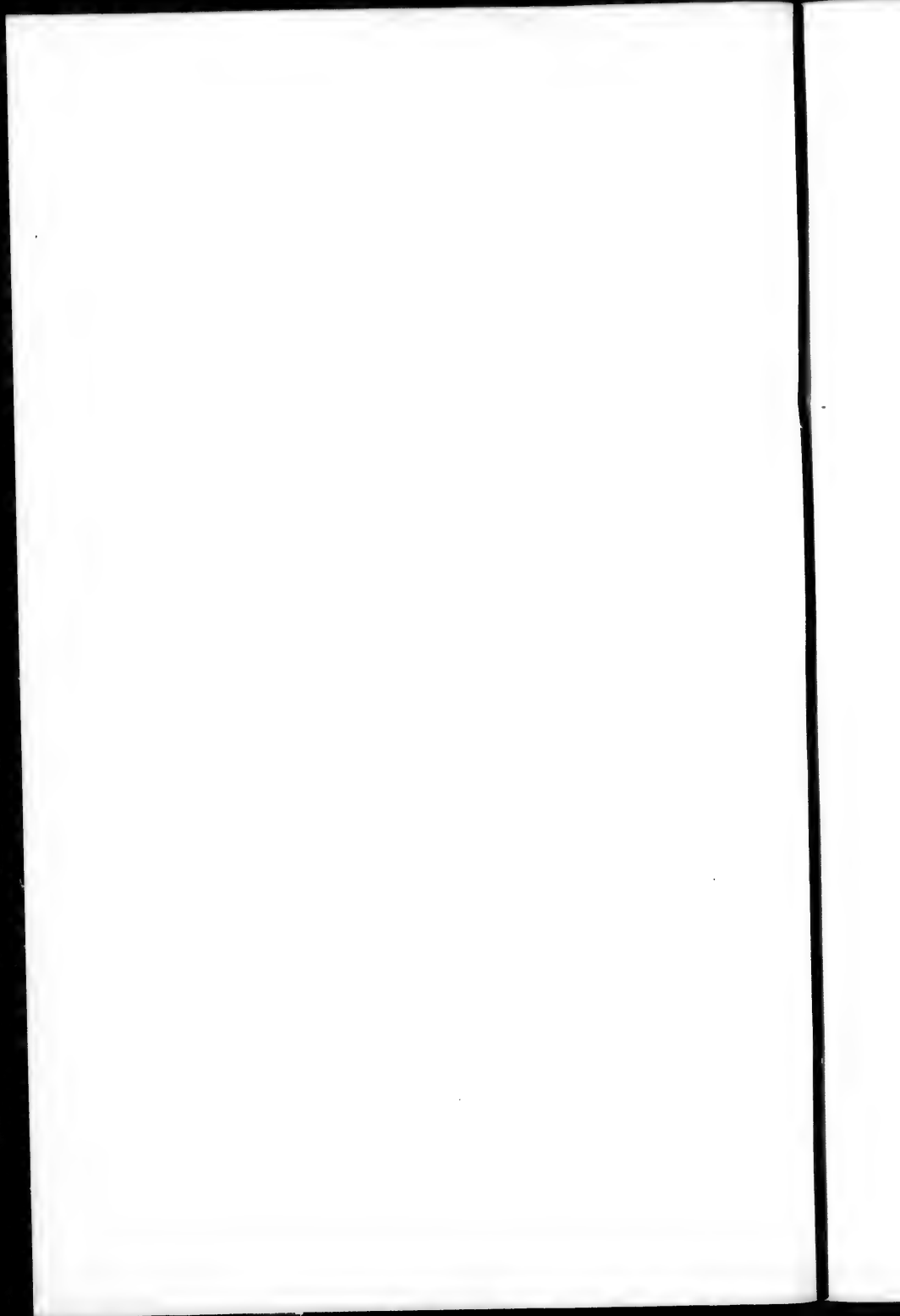
"We do not desire that any distinct reference should be made to the Ukase of 1821; but we do feel it necessary that the statement of our right should be clear and positive, and that it should stand forth in the Convention in the place which properly belongs to it, as a plain and substantive stipulation, and not be brought in as an incidental consequence of other arrangements to which we attach comparatively little importance.

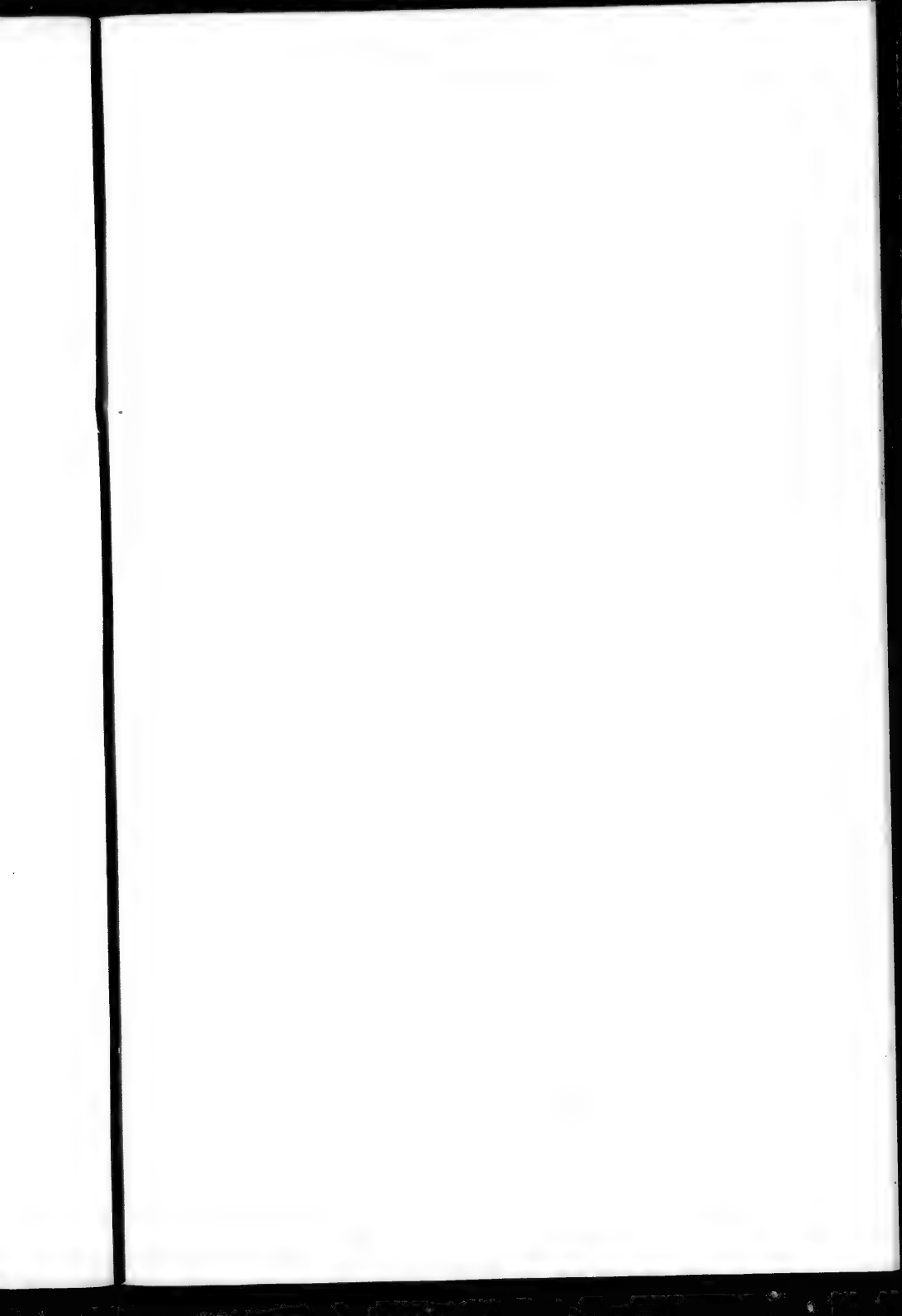
"This stipulation stands in the front of the Convention concluded between Russia and the United States of America; and we see no reason why upon similar claims we should obtain exactly the like satisfaction.

"For reasons of the same nature we cannot consent that the liberty of navigation through Behring Straits should be stated in the Treaty as a boon from Russia.

"The tendency of such a statement would be to give countenance to those claims of exclusive jurisdiction against which we, on our own behalf, and on that of the whole civilized world, protest.

"No specification of this sort is found in the Convention with the United States of America, and yet it cannot be doubted that the Americans consider themselves as secured





in the right of navigating Behring Straits and the sea beyond them.

"It cannot be expected that England should receive as a boon that which the United States hold as a right so unquestionable as not to be worth recording.

"Perhaps the simplest course after all will be to substitute, for all that part of the 'Projet' and 'Contre-Projet' which relates to maritime rights and to navigation, the first two Articles of the Convention already concluded by the Court of St. Petersburg with the United States of America, in the order in which they stand in that Convention.

"Russia cannot mean to give to the United States of America what she withholds from us; nor to withhold from us anything that she has consented to give to the United States.

"The uniformity of stipulations *in pari materia* gives clearness and force to both arrangements, and will establish that footing of equality between the several Contracting Parties which it is most desirable should exist between three Powers whose interests come so nearly in contact with each other in a part of the globe in which no other Power is concerned.

"This therefore is what I am to instruct you to propose at once to the Russian Minister as cutting short an otherwise inconvenient discussion.

"This expedient will dispose of Article I of the 'Projet' and of Articles V and VI of the 'Contre-Projet.'"

In transmitting the Convention signed by the Plenipotentiaries, Mr. S. Canning writes (17th February (1st March), 1825) :—

"With respect to Behring Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian Plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits or of the seas to the north of them."

Allegation that geographers distinguish Behring Sea from Pacific Ocean.

United States' Case, pp. 52, 53.

United States' Case, p. 52.

It is asserted in the United States' Case at pp. 52 and 53 that the terms "Great Ocean, commonly called the Pacific Ocean or South Sea," and "the Ocean, commonly called the Pacific Ocean," as used in the Treaties, are shown by a study of the contemporaneous Maps, Charts, and writings of navigators not to have applied to or to have included Behring Sea.

These Maps and Charts, of which a list is given in the United States' Appendix, are said to prove that—

"the best geographers have at all times distinguished this body of water from the ocean lying south of it, by conferring upon it some separate name."

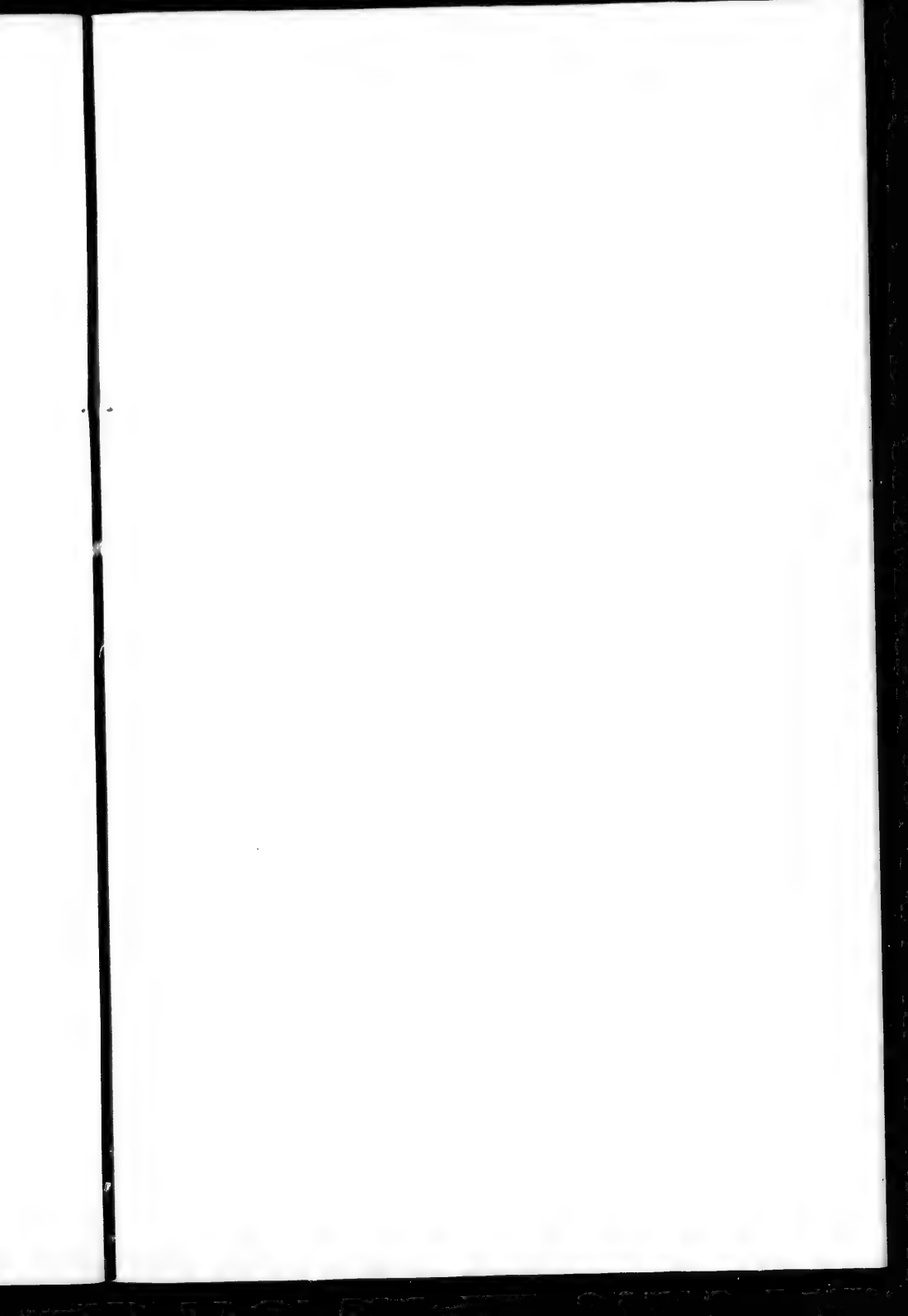
United States' Case, Appendix, vol. i, p. 265.

The only argument afforded by the Maps and Charts in question is that on each of them a special designation is given to the waters now known as Behring Sea.

Great Britain's Case, Appendix, vol. iii.

This argument may be shortly answered by the following quotation from Lord Salisbury's despatch, dated the 21st February, 1891 :—

"But I am not prepared to admit the justice of Mr. Blaine's contention, that the words 'Pacific Ocean' did not include Behring Sea. I believe that in common parlance, then and now, Behring Sea was and is part of the Pacific Ocean; and that the latter words were used in order to give the fullest and widest scope possible to the claim which the British negotiators were solemnly recording of a right freely to navigate and fish in every part of it, and throughout its entire extent. In proof of the argument that the words 'Pacific Ocean' do not include Behring Sea, Mr. Blaine adduces a long list of Maps in which a designation distinct from that of 'Pacific Ocean' is given to Behring Sea; either 'Behring Sea,' or 'Sea of Kamschatka,' or the 'Sea of Anadir.' The argument will hardly have any



force unless it is applicable with equal truth to all the other oceans of the world. But no one will dispute that the Bay of Biscay forms part of the Atlantic Ocean, or that the Gulf of Lyons forms part of the Mediterranean Sea; and yet in most Maps it will be found that to those portions of the larger sea a separate designation has been given. The question whether by the words 'Pacific Ocean' the negotiators meant to include or to exclude Behring Sea depends upon which locution was esteemed to be the correct usage at the time. The date is not a distant one, and there is no ground for suggesting that the usage has changed since the Anglo-Russian Treaty of 1825 was signed. The determination of this point will be most satisfactorily ascertained by consulting the ordinary books of reference. I append to this despatch a list of some thirty works of this class, of various dates from 1795 downwards, and printed in various countries, which combine to show that, in customary parlance, the words 'Pacific Ocean' do include Behring Sea."

The list here referred to has been greatly increased, and is printed in an Appendix to this Counter-Case. The special attention of the Arbitrators is invited to the language of the various authors cited, which leaves no doubt whatever but that at the date of the Treaty Behring Sea was, as it still is, regarded by geographers as part of the Pacific Ocean.

The Case on behalf of United States further invites attention upon this point to—

"the express declarations of the Russian Government on the subject during the negotiations, and after the Treaties had been celebrated."

Two quotations are given in this connection from the correspondence of the Russian-American Company.

To the first quotation no further answer is necessary than to append a correct translation of the original Russian as compared with that relied on by the United States :—

(British translation.)

"These measures should be of such a nature as to make it unnecessary for us any longer to insist on the distance stated in the Rules of the 4th September, 1821, to be that within which no foreign ship may come, and such as to

Appendix.

United States' Case, p. 53.

(American translation.)

"The Rules to be proposed will probably imply that it is no longer necessary to prohibit the navigation of foreign vessels for the distance mentioned in the Edict of 4th September, 1821, and that we will not claim jurisdiction over

coastwise water
other Maritime
facing the open
over all waters
Sea of Okhotsk,
as in all gulfs,
right to the straits

coastwise waters beyond the limits accepted by any other Maritime Power for the whole of our coast facing the open ocean. Over all interior waters, however, and over all waters inclosed by Russian territory, such as the Sea of Okhotsk, Bering Sea, or the Sea of Kamchatka, as well as in all gulfs, bays, and estuaries within our possessions, the right to the strictest control will always be maintained."

enable us to confine ourselves to exercising a control* over such an extent of water only as is by common custom considered to be under the jurisdiction of any Power which has possession of the seaboard, and to introducing on the coast such a system of surveillance as may be found necessary for the protection of our territory from attack, and for the prevention of illicit trading."

By the introduction of the words "facing the open ocean," and the addition of the concluding paragraph, a passage which completely supports the view of Her Britannic Majesty's Government, has, in the hands of a translator, become the foundation-stone upon which the contrary argument of the United States is based.

The second quotation in support of the United States' contention is taken from the Report of the Committee which considered the effect of the Treaty between Russia and the United States. This has been already dealt with at p.

Further evidence that no distinction was drawn by the United States' Government between the coasts of Behring Sea and those of the rest of the Pacific is afforded by the Notice which is referred to at p. 59 of the United States' Case, and is printed in full in United States' Appendix, vol. i, p. 91. The Notice is as follows:—

"It is therefore recommended to American vessels to be careful not to violate the existing Treaty between the two countries by resorting to any point upon the Russian-American coast where there is a Russian establishment without the permission of the Governor or Commander, nor to frequent the interior seas, gulfs, harbours, and creeks upon that coast north of the latitude of 54° 40'."

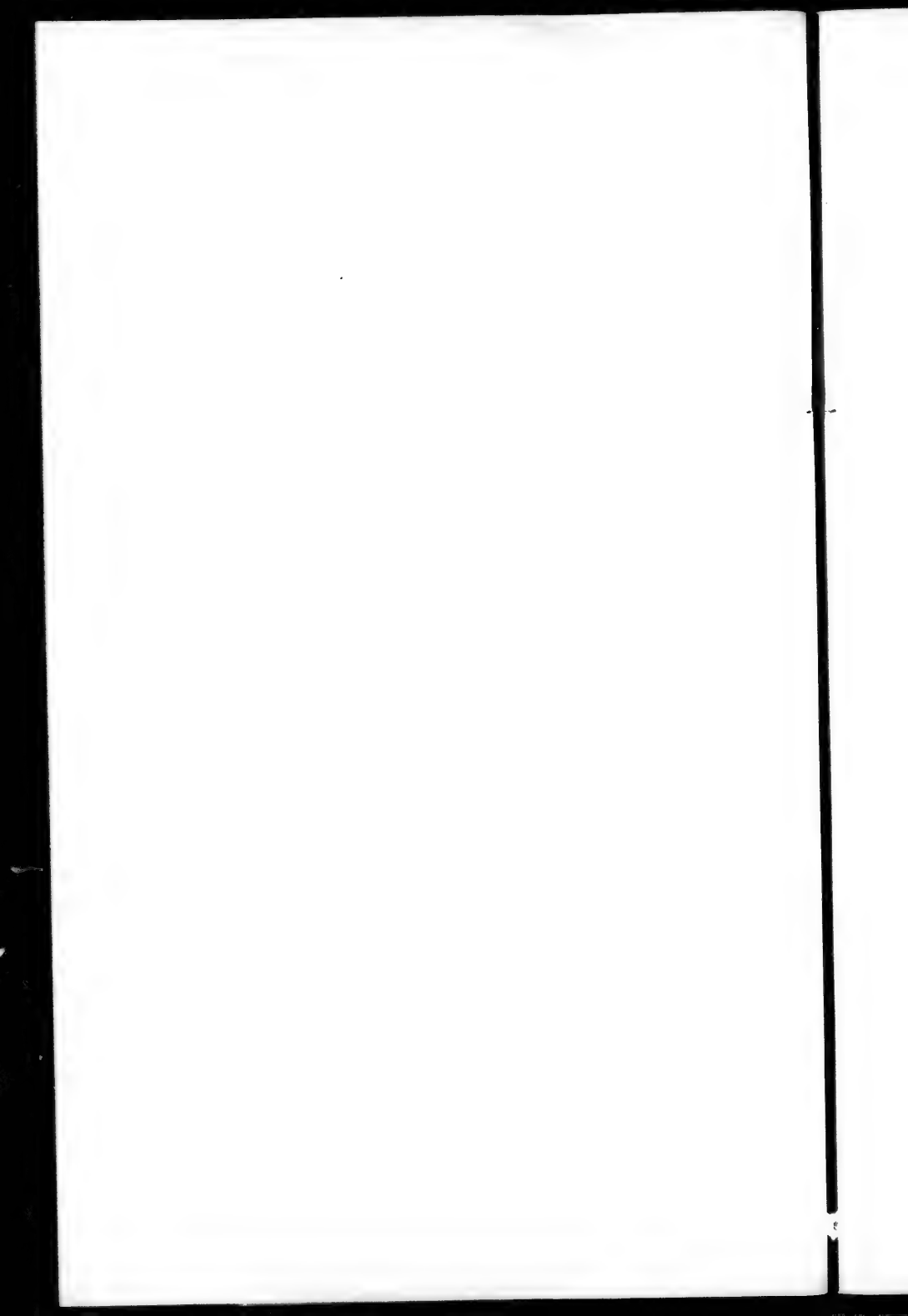
It is difficult to believe that this Notice was ever understood, or intended to be understood,

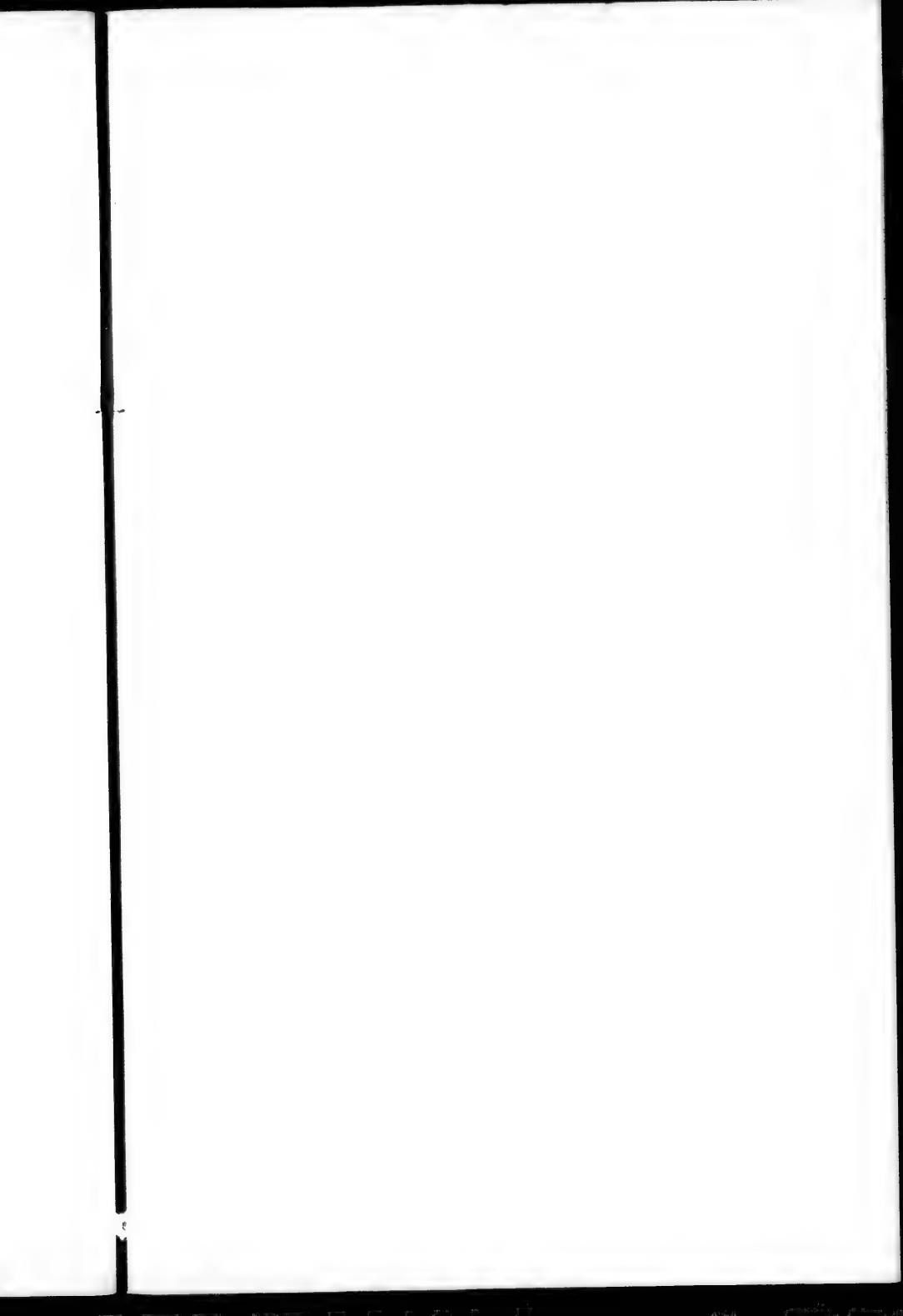
* This communication from the Minister of Finance to the Russian-American Company is dated the 18th July, 1822, and is in complete accord with the assurances given a few days later, on the 24th July, by Count Capodistrias to Mr. Middleton:—

"L'Empereur a déjà eu le bon esprit de voir que cette affaire ne devrait pas être poussée plus loin. Nous sommes disposés à ne pas y donner de suite. Les ordres pour nos vaisseaux de guerre seront bornés à empêcher la contrebande dans les limites reconnues par les autres Puissances, en prenant nos établissements actuels pour base de ces opérations."

United States' Case, Appendix I, p. 136.

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m jurisdiction over





by sailors as applying only to so much of the Russian-American coast as lies between latitude 60° or latitude 59° 30', or any other particular point, and latitude 54° 40'.

HEAD (D).—*The User of the Waters in question from 1821 to 1867.*

It is alleged on behalf of the United States that the jurisdiction of Russia over Behring Sea was always exercised for the protection of the fur-seals, and that the object of the Russian Government in excluding Behring Sea from the effect of the Treaties of 1824 and 1825 was the protection of the fur industry. Reference is made to the documents referred to in Chapter II of the British Case, showing that the object of the Ukase was to prevent illicit trading and interference with the trading of the Russian-American Company, and to the facts fully set out in Chapter IV of the British Case, showing that after the date of the Treaties, as before, foreign vessels repeatedly frequented Behring Sea for the purpose of trading, navigation, and fishing. The instructions sent out by the Russian Foreign Office, cited at p. 85 of the British Case, in the year 1846, conclusively negative the present contentions of the United States upon this point. Not only was the suggested limit of 100 miles not enforced, but, as appears by the instructions, the only limit within which it was found possible to prohibit the approach of foreign ships was the recognized territorial limit of 3 miles.

It is asserted on behalf of the United States that "the reason why the limit of 100 miles was chosen in 1821" was that this limit would "secure to the Russian-American Fur Company the monopoly of the very lucrative profit*" carried on by them. It is argued that the Pribyloff Islands are situated less than 200 Italian miles from the Aleutian Chain on the south, and that thus a sufficient portion of the eastern half of Behring Sea was covered by the Ukase, to enable Russia to protect the herd while there.

It has already been shown that the object of the Ukase was to suppress illicit trading and competition by foreigners with the Russian Company, and it appears from the statement of

Allegation that Russia exercised jurisdiction in Behring Sea for protection of seals.

United States' Case, pp. 57-59

United States' Case, p. 57.
Ibid., p. 59.

Great Britain's Case, p. 59.

United States' Case, p. 40.

Ibid.

Ibid., p. 41.

* *Sic: lege traffic.*

United States' Case, Appendix 1, p. 136.

M. Speransky to Mr. Middleton that the limit of 100 miles was chosen because it was thought that the Treaty of Utrecht afforded a precedent for this particular distance.

No reference, however, is made in the correspondence to the protection of fur-seals as a justification for the choice of the limit specified. It is true that in the conversation with the Governor-General of Siberia, already referred to, which is quoted at p. 40 of the United States' Case, reference is made to the "very lucrative traffic" carried on by the Russian-American Fur Company, but the trade in fur-seal skins was not the sole or even the most considerable item in that traffic. The fur of the sea-otter was the chief object of the hunting expeditions at this date, and commanded a far higher price in the market than any other skin. The traffic included also foxes (blue, white, grey, and black), beavers, bears, and other fur-bearing animals, while the fur-seal skin commanded only a small price.

Alaska, p. 538.

Bancroft writes:—

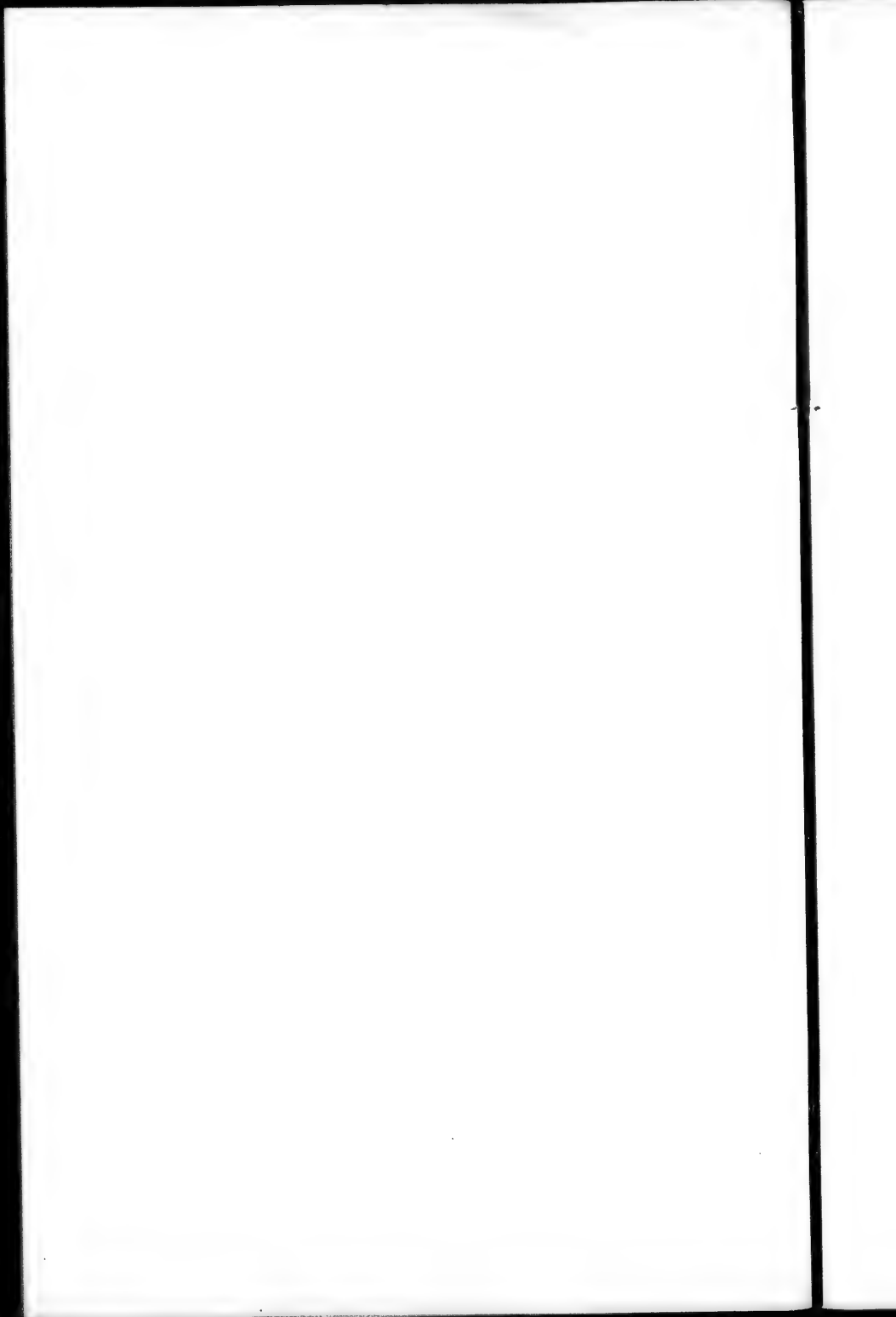
"In 1825 fur-seal skins were bartered in the Sandwich Islands by the captain of one of the Company's ships on the basis of 1 dol. 75 c. per skin. This seems an extravagant price, when, as will be remembered, the price at Kiakhta was only 5 to 7 roubles in scrip (1 dollar to 1 dol. 40 c.); but it was the usual rate at which furs were exchanged at Novo Arkhangelsk with American and English skippers."

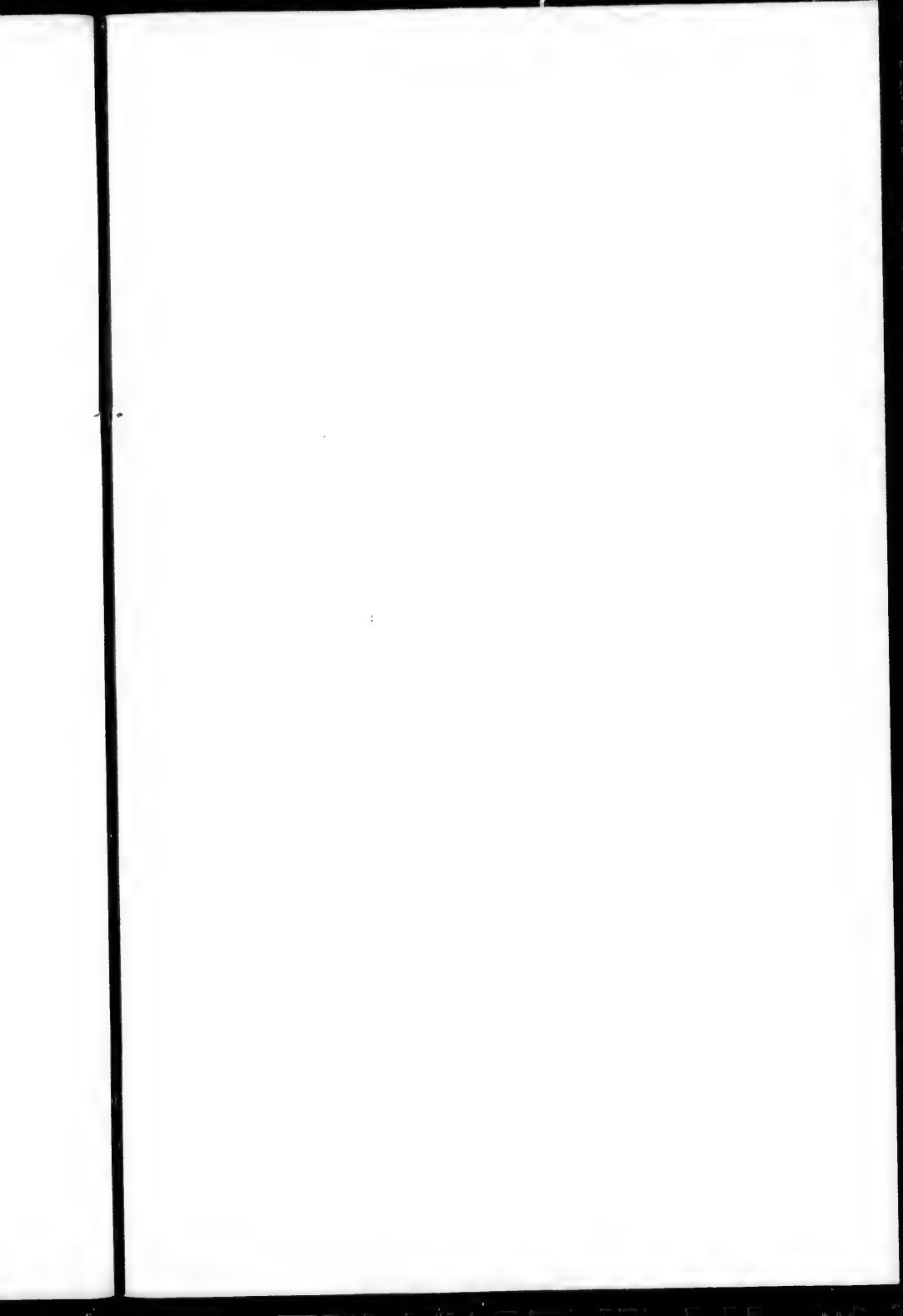
It thus appears that the quotation at p. 40 of the United States' Case does not support the inference which is sought to be drawn from it, that the limit of 100 miles was specially chosen for the protection of the fur-seals.

This limit, moreover, goes much further than was necessary if the protection of fur-seals had been the object of the Russian Government. The enforcement of the 100-mile limit would have absolutely precluded foreign vessels from navigating for any purpose in any part of Behring Strait, Behring Sea, the Sea of Okhotsk, and a large area of ocean south of the Aleutian Chain, and along the coasts of both continents.

United States' Case, p. 57.

An attempt is made at p. 57 of the United States' Case to explain the undoubted fact, relied upon by Great Britain, that no restraint was ever placed by Russia upon the free entrance of foreign vessels into Behring Sea for the purposes of navigation and of hunting whales.





It is asserted that—

"Russia never sought to prevent vessels from passing through Behring Sea in order to reach the Arctic Ocean; nor did she always strictly enforce the prohibition of whaling within the distance of 100 miles from its shores; but so far as the fur-seals are concerned, it will be made to appear in what follows that the jurisdiction in question was always exercised for their protection."

In support of this statement, quotations are given at pp. 60 and 61 of the United States' Case from the correspondence of the Russian-American Company.

It is denied, in the first place, that any right, apart from Treaty, to treat a sea as *mare clausum* for one special purpose only is known to international law. No instance of such a right exists at the present day, and from the silence of writers on international law it may be presumed that no such right would be recognized by them.

The claim of jurisdiction now asserted assumes the possibility of the occupation and appropriation of the open sea by a single nation, a doctrine which is repudiated by all authorities at the present day. Such a claim could only be based on the fact of an effective occupation of the sea to which the claim is made. No part of the open sea can be recognized as *mare clausum* which has not been so completely possessed and occupied by the State which claims it as to become practically a portion of its territorial dominion:—

Wheaton, Part II,
Chap. 4.

Calvo, vol. i,
sec. 346.

Hall, p. 125.

"En droit comme en fait, la propriété n'existe qu'à la condition de reposer sur une chose tangible, susceptible de possession et de détention exclusives."

Calvo, vol. i,
sec. 346.

The admission, therefore, that for the purposes of navigation and fishing no exclusive dominion was asserted, is in itself sufficient to destroy any claim to possessory rights over the open waters of Behring Sea.

Further, it is plain that in the absence of any Treaty or other public Notification, the alleged special reservation of seals (assuming that it ever had any existence in fact or any legal validity) never could have come to the knowledge of the sailors of various nations who from time to time visited these regions. Nor did Russia ever maintain in Behring Sea a naval force capable of giving effect to any such prohibition by force of arms.

In the second place, attention is called to the fact that no evidence is forthcoming to support the alleged reservation of the exclusive right of sealing.

It has already been shown that prior to the Treaty of 1825 Russia possessed no such sovereignty over the shores of Behring Sea as would enable her to exclude the vessels of other nations even from the coasts. Much less had she power to exclude vessels upon the high seas, either from navigating thereon or from the exercise of any particular industry.

In 1821, she made an attempt to assert a dominion over both sea and shore. The Ukase of that year purported to exclude foreigners from the pursuits of commerce, whaling, and fishing, and of all other industry, within certain limits, and prohibited their approach within 100 miles of the coast.

In the Treaty of 1825, her territorial dominion over all the shores of Behring Sea received for the first time the recognition of a foreign Power. But in the negotiations of the two Treaties of 1824 and 1825, the obnoxious claim of an extraordinary maritime jurisdiction was withdrawn, and the withdrawal was co-extensive with the claim.

Neither in the negotiations nor in the Treaties is there any reservation of a right to exclude foreigners from the particular pursuit of seal-fishing, nor is there a single instance of the exclusion of a foreign vessel from this fishery.

Whaling, which was expressly forbidden by the Ukase, was admittedly carried on without restraint after the Treaties, and there is ample evidence of the large development of this industry.

There is no evidence whatever of the existence, the enforcement, or the recognition by other nations of any restriction upon sealing.

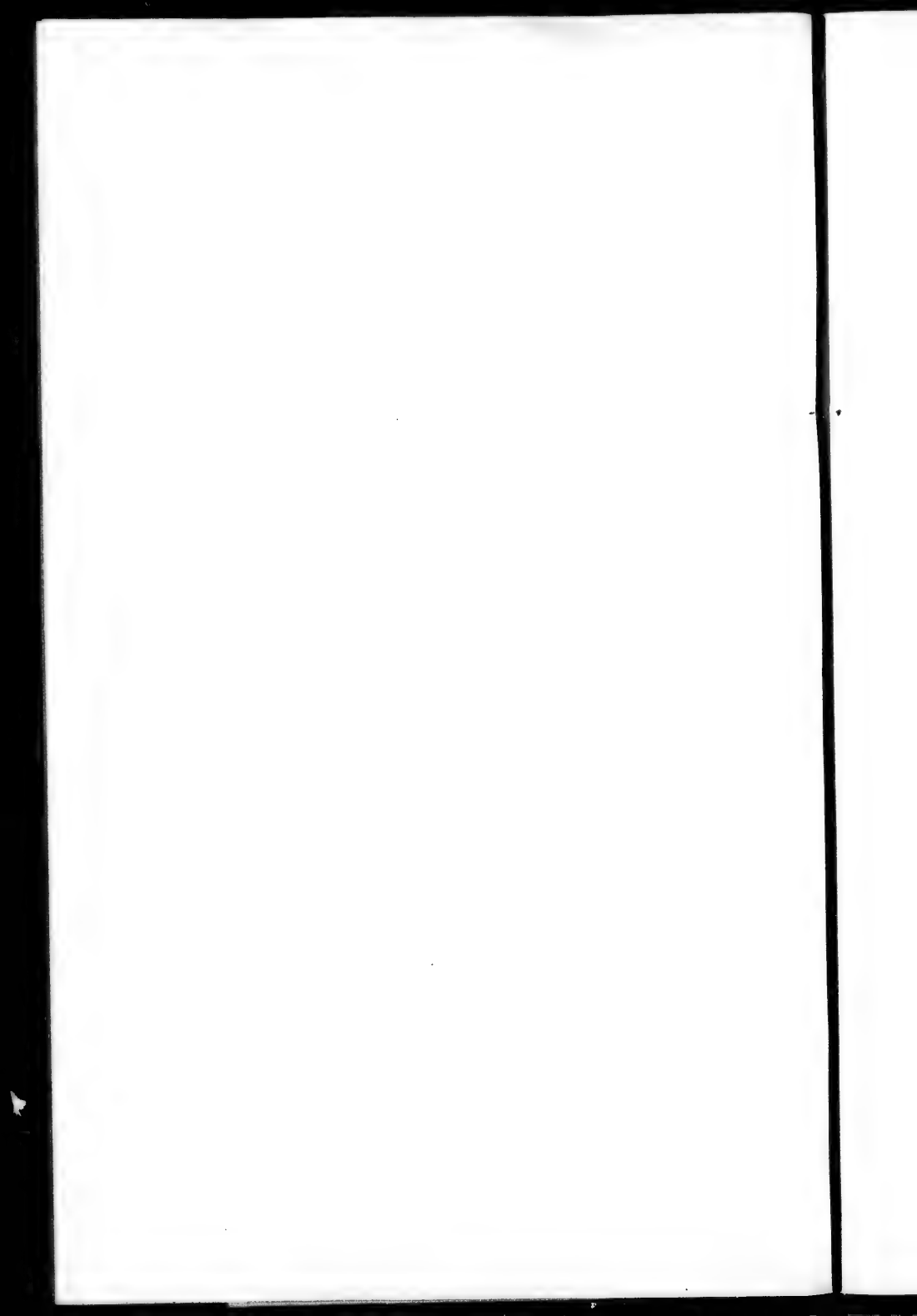
It is true that no instances are forthcoming of pelagic sealing in Behring Sea at the time of the Treaties, because this industry was unknown before 1866. But the fact remains that every then known form of industry was freely carried on in Behring Sea, and demonstrates the complete freedom of its waters.

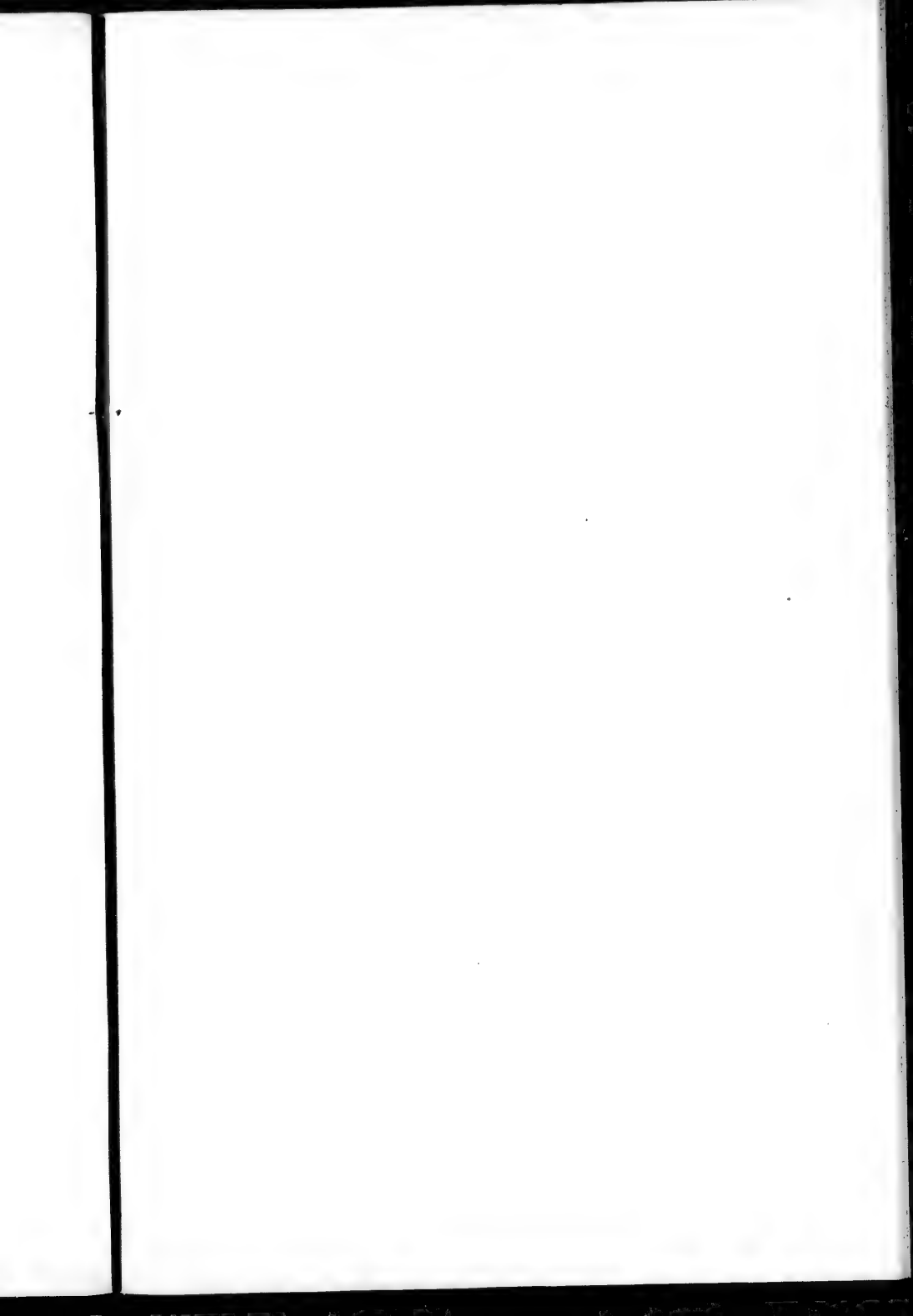
It is emphatically denied that the burden of proof on this point rests upon Great Britain. The true construction of the Treaties indeed leaves no point to be proved, but, in any case, the

Great Britain's
Case, p. 89.

British Commis-
sioners' Report,
p. 100, paragraph
586.

United States'
Case, p. 57.





onus must rest upon the nation which is contending for a jurisdiction in excess of that which is admitted by international consent to prove the existence of such jurisdiction by instances of its exercise or of its recognition by other Powers, and the claims of the United States cannot be supported merely by the negative fact that for many years after the Ukase and the Treaties there is no record of pelagic sealing in Behring Sea.

It is clear, however, that the Russian Government in 1846 took a different view of its rights from that now contended for by the United States. In that year, the Government was specially invited by the Governor-General of Eastern Siberia to enforce the prohibition of whaling within a distance of 40 miles of the shore.

The reply of the Government was not that it preferred not to "strictly enforce" its undoubted right, but that no such right existed. The Foreign Office wrote:—

United States' Case, p. 57.

"We have no right to exclude foreign ships from that part of the great ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales.' The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon-shot, that is, about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognized by the other Powers."

Tikmenieff, Great Britain's Case, Appendix, vol. 1, No. 5, p. 88.

The instructions to cruisers with reference to whaling in Okhotsk Sea, quoted at p. 113 of the Case for Great Britain, are to the same effect.

In conclusion, the quotations relied upon at pp. 60, 61 of the United States' Case entirely fail to support the allegation now under discussion.

In the first two quotations, no reference whatever is made to the fur industry. They are merely general assurances of the good-will of the Government. The third and last quotation reads as follows:—

"It is His Majesty's firm determination to protect the Company's interests in the catch and preservation of all

marine animals, and to secure to it all the advantages to which it is entitled under the Charter and privileges."

A reference to the British translation of the Russian original will show that the words in italics are mere interpolations upon the Russian text.

These quotations are the only evidence offered in the United States' Case in support of the contention discussed above.

Allegation that Russia continued after
Treaties to exercise control over
Behring Sea.

United States' Case, p. 61.
United States'
Case, p. 61.

At p. 61 of the United States' Case, it is asserted—

"that by the Treaties of 1824 and 1825 Russia did not surrender her claim to exclusive control of trade, and especially of the fur industry in Behring Sea. Positive confirmation "

of this assertion is stated to be found in the fact, that the same control over the waters of that sea was enforced after the date of the Treaties as before.

The evidence offered in support of this assertion consists of the Charters granted to Russian-American Company in 1829 and 1842, and of extracts from the Company's records.

The Charter of 1829 is described in the United States' Case as a confirmation of the Charter of 1821—

"except in so far as it had been modified by the Treaties of 1824 and 1825."

The modifications here referred to are of the utmost importance, and deserve most careful consideration.

Ibid., Appendix,
vol. i, p. 25.

Great Britain's
Case, Appendix,
vol. i, p. 1.

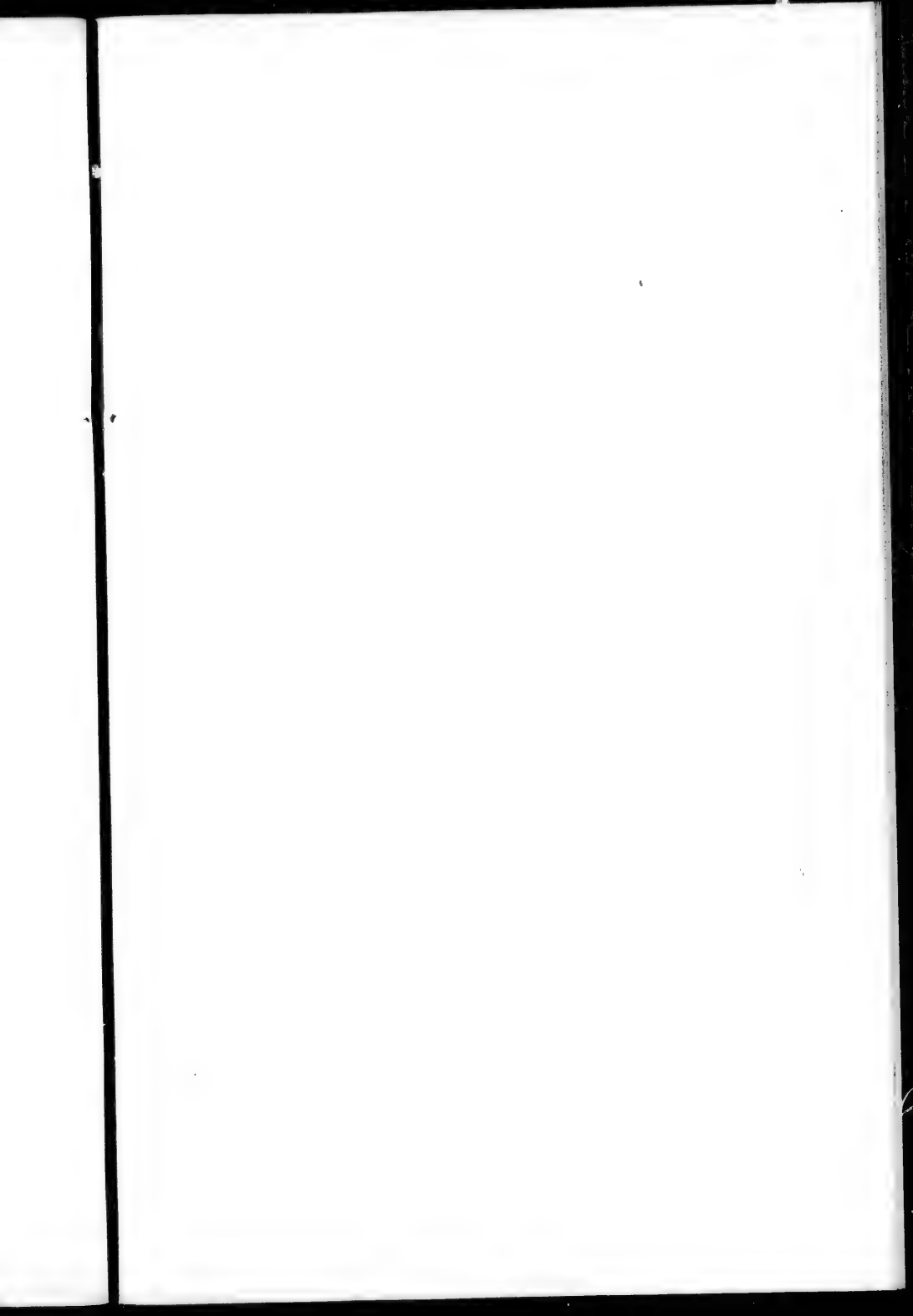
By Section 1 of the Rules attached to the Ukase of the 7th September, 1821—

"the pursuits of commerce, whaling, and fishing, and of all other industry on all islands, posts, and gulfs, including the whole of the north-west coast of America, beginning from Behring Straits to the 51st degree of northern latitude . . . is exclusively granted to Russian subjects."

Ibid., p. 9.

By Article II of the Charter of the 13th September, 1821, the Emperor proceeded to grant to the Russian-American Company—

"the privilege of hunting and fishing to the exclusion of all other Russian or foreign subjects throughout the territories long since in the possession of Russia on the coasts of North-west America, beginning at the northern point of the Island of Vancouver, in latitude 51° north, and extending to Behring Strait and beyond. . . ."



Article VI refers also to the exclusive rights of the Company, and to the prevention of molestation or disturbance on the part of *Russian subjects or foreigners*.

In the first Charter granted subsequently to the Treaties of 1824 and 1825, there is a striking change in the language used by the Russian Sovereign.

Articles 2 and 3 of this Charter, which is United States' Case, Appendix I, p. 28. dated the 29th March (10th April), 1829, are as follows :—

"2. The limits of navigation and industry of the Company are determined by the Treaties concluded with the United States of America the 5th (17th) April, 1824, and with England the 16th (28th) February, 1825.

"3. In all the places allotted to Russia by these Treaties there shall be reserved to the Company the right to profit by all the fur and fish industries, *to the exclusion of all other Russian subjects.*"

The Charter of 1844 is equally significant. Ibid.

Section 2 sets out the boundary-line which was described by the Treaty of 1825 between Great Britain and Russia.

Section 3 reads as follows :—

"Section 3. In all places annexed to Russia by the above-mentioned delimitation there is granted to the Company the right to carry on the fur and fishing industries *to the exclusion of all Russian subjects.*"

The above extracts show conclusively that after the Treaties which resulted from the negotiations upon the question of the Ukase of 1821, the claim to exclude foreigners from navigating, hunting, and fishing, asserted by Russia in that Ukase for the first and only time, was definitely abandoned.

It is further to be noted that the limits of the Company's territories are clearly defined in each of the three Charters quoted above, and though they are not described in identical terms in each Charter, the coast-line which is granted includes in each case the whole Russian shore from the Arctic Ocean to the southernmost limit.

If the Russian Government had considered itself entitled, in spite of the Treaties, to close Behring Sea to the approach of foreigners, it is inconceivable that the Charters should not have been so worded as to reserve the waters and coast of Behring Sea, while opening to foreigners the waters and coasts to the southward of that sea.

If this distinction was to be drawn at any time it must of necessity have been drawn upon this occasion, and the omission to do so becomes more significant when the Charters of 1829 and 1844 are read in connection with the protests of the Russian-American Company against the terms of the Treaties, and the proceedings of the Committee which investigated those complaints in 1824.

United States' Case, Appendix, vol. i, p. 68.

Quotations from Correspondence of Russian-American Company.

United States' Case, p. 62.

United States' Case, p. 62.

See Appendix.

The remainder of the evidence upon which the Case for the United States depends in respect of the period now under discussion consists of extracts from the correspondence of the Russian-American Company.

The first extract at p. 62 of the United States' Case is merely a business letter from the Board of the Company to its chief Manager, and requires no comment, except that the translation is not accurate.

The letter of the Board, dated the 20th March, 1853, from which several quotations are made at pp. 62-66 of the United States' Case, deserves more detailed attention, as it affords the most glaring instances of the interpolations and mis-translation which have been already mentioned in connection with the correspondence of the Company.

The first quotation is as follows:—

"The Board of Administration respectfully requests that in case the interests of the Company require a deviation from our plans, your Excellency will never lose sight of the fact that *the interests of the Company are centered at the present time in the district surrounding the seal islands of the Pribilof and Commander groups, and that consequently the colonial waters must be visited by the Company's cruisers constantly and in every part, in order to watch and warn the foreign whalers.*"

United States' Case, pp. 62-66.

This is twice quoted in the United States' Case, and special attention is directed to it at p. 63 as a communication which—

"throws much light upon the commercial activity of the Russian-American Company, and may be accepted as indicative of the methods by which, in the last term of its Charter, it enforced its control in the colonial waters."

The value of this passage for the purpose for which it is quoted is, however, entirely destroyed by the discovery that the words which have been

here printed in *italic* are mere interpolations in the text of the despatch, and do not exist in the original Russian. See Appendix.

The second passage is as follows :—

" *This agent must observe and keep a record of all foreign ships seen during the voyage, and of the position of the same when observed, for the information of commanders of our armed cruisers and of the colonial authorities in Sitka, Kamchatka, and Ayan.*" United States' Case, p. 63.

This quotation has even less value than the first, for it appears that not one word of the whole passage is to be found in the original Russian.

The third quotation is of greater length than the others, and refers to what is termed in the United States' Case a "protective scheme." The inaccuracies of the translation of this passage are too numerous to be here noticed, but may be seen at once by a comparison with the literal translation in the Appendix to this Counter-Case. The passage is here printed in a foot-note for the purpose of showing the paragraphs which are mere interpolations. They are printed in *italics*.* See Appendix.

* "2. One of the larger vessels should leave the port of New Archangel for Ayan not later than the 15th May, to arrive at the latter port at the end of June. This ship, *which must be armed*, will carry passengers, stores, and supplies for our Asiatic stations. *On the outward voyage the course of this vessel should be laid to the northward of the chain of the Aleutian Islands, in order to meet foreign ships entering Bering Sea, and to warn them against cruising in pursuit of whales in the vicinity of the seal islands of the Pribilof and Commander groups.* . . .

"3. A second small vessel, the swiftest of the fleet, probably the "Menshikov," with a naval crew, and commanded by a naval officer, must sail from Sitka at the end of April for the sole purpose of watching the foreign whale ships in the southern part of Bering Sea and along the chain of the Aleutian Islands. On this vessel supplies may be forwarded to Copper and Bering Islands, and, perhaps, to Attu and Atka. . . . This vessel must be kept cruising constantly over the waters mentioned above, and must not enter any of the harbors except for the purpose of obtaining water and wood, on which occasions the stay of the vessel must be limited to the briefest possible period. Each of the above-mentioned islands must be visited by this cruiser at least twice during the season. . . . The conclusion of this cruising voyage depends upon the time at which the foreign whale-ships leave Bering Sea, which is probably at the end of August or the beginning of September.

"5. The second large vessel must be employed to supply the islands of the Unalaska district, the Pribilof Islands, and St. Michael's Redoubt, and also to carry on intercourse with the coast tribes of Bering Sea, on the Asiatic as well as on the

Throughout this despatch, when correctly translated, there is no mention whatever of the protection of the fur-seals. It is true that instructions are given to—

See Appendix.

British translation, paragraph 3, and see paragraph 5 and last paragraph of despatch.

Ibid., paragraph 5.

"watch the foreign whalers until they leave Behring Sea at the end of August or the beginning of September,"

but the only indication given as to the object of such watching is—

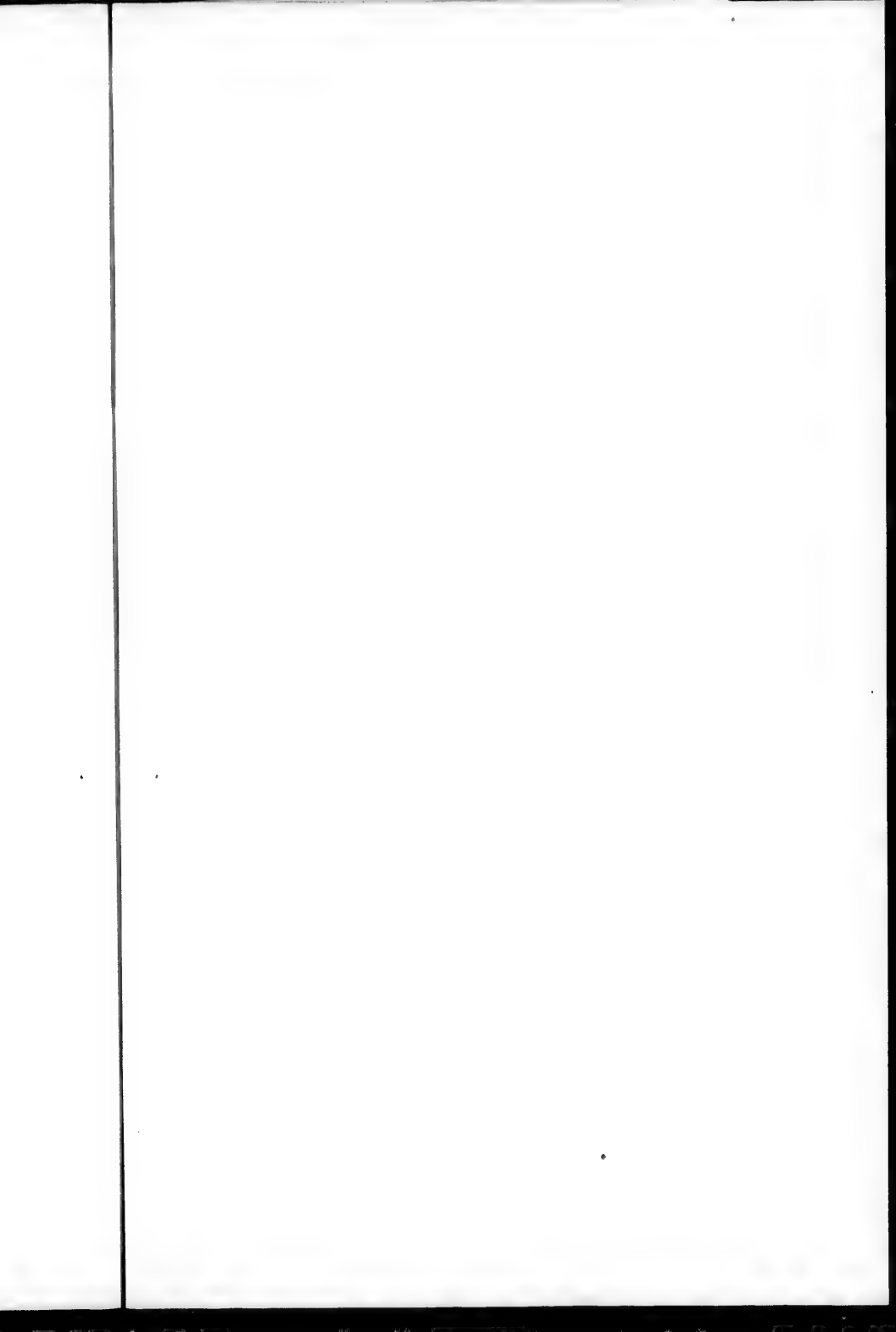
"to see that Englishmen do not traffic with our natives."

Even if the preservation of fur-seals or fur-seal fisheries had been specially mentioned as the object of these instructions, it is denied that they could have any weight as evidence for the purpose for which they are quoted in the United States' Case unless it could be shown that they were acted upon in practice by the expulsion of a foreign ship. Of this, however, no evidence is offered, and it is confidently asserted that no such evidence exists.

American coasts. . . . During the whole time of the presence of this ship in the northern part of Bering Sea and the vicinity of the Pribilof Islands, the commander must be charged with the duty of cruising in search of foreign whale-ships and of English vessels carrying on trade with our savages. This ship, also, must make no prolonged stay at any anchorage, and must be placed under the command of a naval officer, with a crew consisting principally of sailors of the navy. . . .

"7. The fourth large vessel of the fleet, which may be used for voyages to Kamchatka, must also be fitted out as an armed cruiser and kept in readiness to proceed to any point in Bering Sea or in Siberian waters, from which the presence of foreign ships may be reported by the smaller vessels in the course of the season.

"In transmitting to your Excellency the above outline plan for the employment of the colonial fleet, the Board of Administration respectfully requests that in case the interests of the Company require a deviation from our plans, your Excellency will never lose sight of the fact that the interests of the Company are centered at the present time in the district surrounding the seal islands of the Pribilof and Commander groups, and that consequently the colonial waters must be visited by the Company's cruisers constantly and in every part, in order to watch and warn the foreign whalers. For this purpose detailed instructions have been formulated for our cruisers, as well as for the commanders of the whale-ships of the Company, which are obliged to serve in the capacity of cruisers when engaged in whaling in Bering Sea. In all cases the command of a vessel under orders to cruise in colonial waters must be given to naval officers, who will thereby find an opportunity to make themselves acquainted with the routine of colonial transactions, while at the same time their rank will give authority to our proceedings."



At p. 67 of the United States' Case the following extract is quoted from the letter from the Chief Manager of the Russian Colonies to Benjamine, dated 20th June, 1861:—

United States' Case, p. 67.

(British translation.)

"9. It has come to my knowledge that two whalers have this year left San Francisco to trade on the Pribyloff Islands. I have therefore to instruct you to perform, while on the voyage you have been directed to make, the duties of a cruiser, acting in strict accordance with the inclosed instructions sanctioned by the Emperor."

(United States' translation.)

"9. It has come to my knowledge that in the present year two whaling-vessels have sailed from San Francisco for the purpose of trading on the Pribilof Islands or of hunting in their vicinity. Consequently, I would suggest that during your presence in those waters you will exercise the duties of an armed cruiser, to prevent any unlawful acts on the part not only of these two vessels, but of any others which you may find in Bering Sea."

It will be seen that the passages printed in *italics* are not to be found in the original Russian, while the "inclosed instructions sanctioned by the Emperor," which are mentioned in the original, have been entirely omitted in the quotation. The production of those "instructions" is essential to the correct appreciation of the despatch in which they were inclosed.

The Proclamation issued at Sitka in 1864 is similarly made to serve as evidence in the United States' Case, by the insertion of the words "*or waters.*" No such words occur in the original, which is merely a notice to quit Russian territory.

United States' Case, p. 67.

Further quotations are made at pp. 68 and 69 of the United States' Case, as to all of which it may be remarked that the documents quoted are of a purely municipal character, affecting Russian subjects only.

Ibid., pp. 68, 69.

Two points, however, deserve more detailed notice:—

1. In the proposals for the renewal of the Company's Charter in 1865 and 1866, there is no suggestion that powers should be granted to exclude foreigners, such as had been granted by the Charter of 1821, and subsequently abandoned in the Charters of 1829 and 1844.

2. The letter of the Minister of Finance, dated the 19th June, 1865, affords further confirmation of the fact that the Russian Government was unaware of the existence of any such special jurisdiction over the waters of Behring Sea as is now claimed by the United States as the successors of that Government.

Ibid., p. 68.

United States' Case, Appendix, vol. i, p. 75.

The Minister proposed, in paragraph 15 of his letter, to reserve to the Company the exclusive right of engaging in the fur trade on the

Ibid., p. 77.

Peninsula of Alaska, the islands, and the *western shore** of Behring Sea—

As regards the region stretching north-east of the Alaska Peninsula, along the whole of the coast up to the boundary-line contiguous with the possessions of Great Britain, and on the islands situated along that coast, including Sitka and the whole of the Koloshian Archipelago, and likewise on the continent of the northern part of America, the privilege of the Company to exclusively engage in fur trade shall be abolished."

This is described in the United States' Case as a proposal to extend the privileges—

"only to the region about Behring Sea."

If this is intended to be used as evidence of the exercise of the extraordinary jurisdiction over Behring Sea which is claimed in the United States' Case, it becomes necessary to enter a protest against the attempt which is made to put upon the passage a construction which it was never intended to bear, and which only becomes possible by the unwarranted assumption that when the writer mentioned the western shore he meant to refer to the eastern.

The passage shows that so far from asserting exclusive rights—

"in the region about Behring Sea,"

the writer actually proposed to abolish the exclusive privilege of the Company upon the eastern shores of that sea, and treated those coasts and the coasts of the Pacific to the eastward and southward of the Alaskan Peninsula, including Sitka, as subject in precisely the same manner and to the same extent to the jurisdiction of Russia.

HEAD (E).—*The Treaty of Cession of 1867.*

It is alleged on behalf of the United States that the Treaty of 1867 between Russia and the United States was an assertion by the great nations that Russia had theretofore claimed the ownership of Behring Sea, that she then ceded a portion of it to the United States, and that to

* The foot-note, United States' Appendix, vol. i, p. 77, is obviously erroneous. The passage as it stands deals, in due course, with *all* the shores of the Russian possessions. But the proposed substitution of "eastern" for "western" involves the omission of all reference to the Asiatic shores, and renders meaningless the subsequent reference to the "continent of the northern part of America."

in the present
San Francisco
Islands or of
would suggest
you will exer-
at any unlawful
of any others

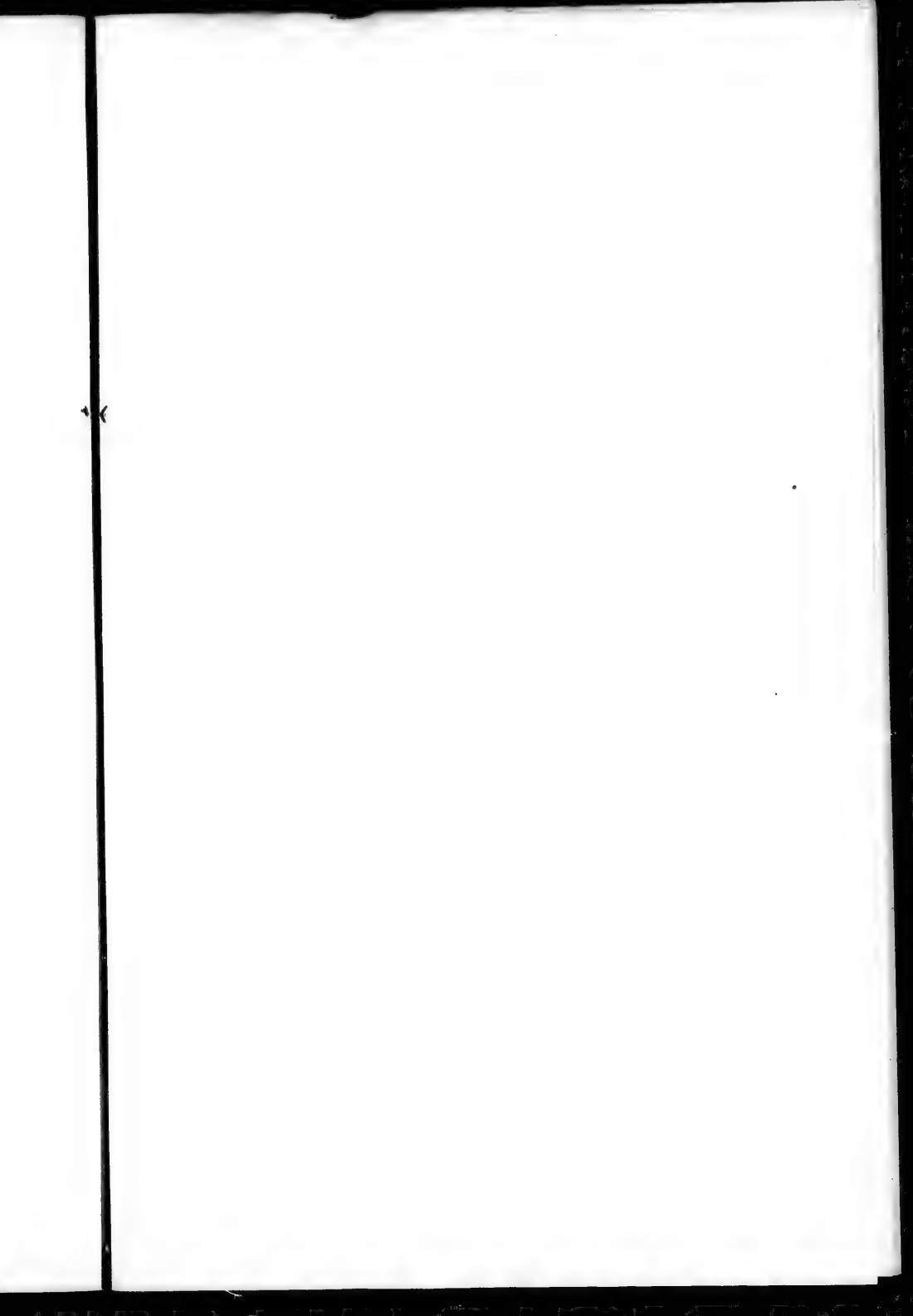
United States'
Case, p. 68.

bid.

Allegation that Treaty of 1867 was
assertion of ownership of Behring
Sea.

United States' Case, p. 70.

United States'
Case, p. 70.



this assertion no objection has ever been made. Neither the Treaty of 1867 nor any other document communicated to foreign nations in connection therewith asserted any claim to the ownership of Behring Sea. Reference is made to the observations in Chapter V of the British Case. The extracts from the debates in Congress and the negotiations which took place prior to the completion of the Treaty show conclusively that it was not supposed by the advisers of the United States, or by any person on their behalf, that any exclusive dominion over Behring Sea was being acquired. The Report of the Committee, referred to at pp. 75 and 76 of the United States' Case, is not a Report made by or about the time of the Treaty or acquisition of Alaska, but is a Report made in view of the present controversy in the year 1889.

No reference is made in the United States' Case to the report of any previous communication which inquired into the facts connected with the purchase of Alaska; *e.g.*, the Report of 1868 of the Committee on Foreign Affairs, quoted by Bancroft, *Alaska*, p. 595.

The Committee of Ways and Means, to whom in 1876 was referred a Resolution of the House of Representatives, directing an investigation into certain matters relating to the lease by the United States' Government to the Alaska Commercial Company, presented a Report, from which the following is an extract:—

"When the proposition to purchase the Alaska Territory from Russia was before Congress, the opposition to it was very much based on alleged barrenness and worthlessness of the territory to be acquired. It was supposed that though there might be many political reasons for this addition to the American Pacific possessions, there were not commercial or revenue advantages. The value of those seal islands was not considered at all. Russia had derived but little revenue from them, indeed a sum not sufficient to pay the contingent expenses of maintaining the official authority. Under our system, however, we have a very different result."

H. R. Ex. Doc.,
44th Cong.,
1st Sess., No 623,
p. 12.

Mr. H. W. Elliott, in his Report on the seal islands of Alaska (United States' 10th Census Report, 1881), writes as follows upon this point:—

"Strange ignorance of their value in 1867:

"Considering that this return is the only one made to the Government by Alaska since its transfer, and that it was never taken into account at first by the most ardent advocates of the purchase of Russian-America, it is in itself

"The Seal Islands of Alaska," by Henry W. Elliott, Washington, Government Printing Office, 1881, pp. 58, 69.

Foot-note in
original.

highly creditable and interesting; to Senator Sumner the friends of the acquisition of this territory in 1867 delegated the task of making the principal argument in its favour. Everything that was written in strange tongues was carefully translated for the choice bits of mention which could be found of Alaska's value. Hence his speech on the subject possesses this interest (Speech on Cession of Russian-America, United States' Senate, 1867, 'Summary,' p. 48): It is the embodiment of everything that could be scraped together, having the faintest shadow of authenticity, by all of the eager friends of the purchase, which gave the least idea of any valuable natural resources in Alaska; therefore, when, in summing up all this, he makes no reference whatever to the seal islands, or the fur-seal itself, the extraordinary ignorance at home and abroad relative to the Pribyloff Islands can be well appreciated."

Great Britain's
Case, Appendix 1,
p. 81.

Mr. Sumner did, in fact, make a reference to the fur-seal, but in a single paragraph only, in the course of his long speech, and the perusal of that speech shows the relatively small importance which he attached to the fur-seal fishery.

Mr. Elliott has since repeated the opinion expressed in the above-quoted Report, in the evidence which he gave to the Committee whose Report is quoted at p. 75 of the United States' Case:—

H. R. Ex. Doc.,
50th Cong.,
2nd Sess.,
No. 3883, p. 139.

"The Russians made no effort to hold these islands, at the time of the transfer, simply because they did not value their sealing industry; it was of small consequence to them, a skin only being worth from 3 to 4 dollars in London.

"They failed to properly develop the market, as the lessees have done under our Government."

In a letter written by Dr. W. H. Dall, to correct some statements attributed to him in the discussion arising from the paper by Mr. W. Palmer, read before the Biological Society at Washington, he says:—

"I said that in 1866 (not 'in the early days of the industry') I purchased first-class fur-seal skins at 12½ cents a-piece, that being the price at which they were sold by the Russians. The point of this observation lies in its application to the oft-repeated statement that, as Mr. Palmer says, 'little stress was laid upon the fact that fur-seals were found in abundance' at the time of the purchase of the Territory by the United States. No stress could reasonably have been laid upon it, since 100,000 seals would at that time have been worth only some 12,500 dollars, which would hardly have paid for the trouble of taking them. Of course, almost immediately afterwards this was no longer true."—("Forest and Stream," November 5, 1891.)

CONFIDENTIAL.

BEHRING SEA ARBITRATION.

*Preliminary Draft Counter-Case to meet
Part II of United States' Case.*

Arrangement.

- I. General Statement (pp. 1 to 10).
- II. General Character of United States' Evidence (pp. 11 to 15).
- III. United States' Propositions (dealt with *seriatim*) (pp. 16 to).
- IV. United States' Conclusions. Reply (pp. to).

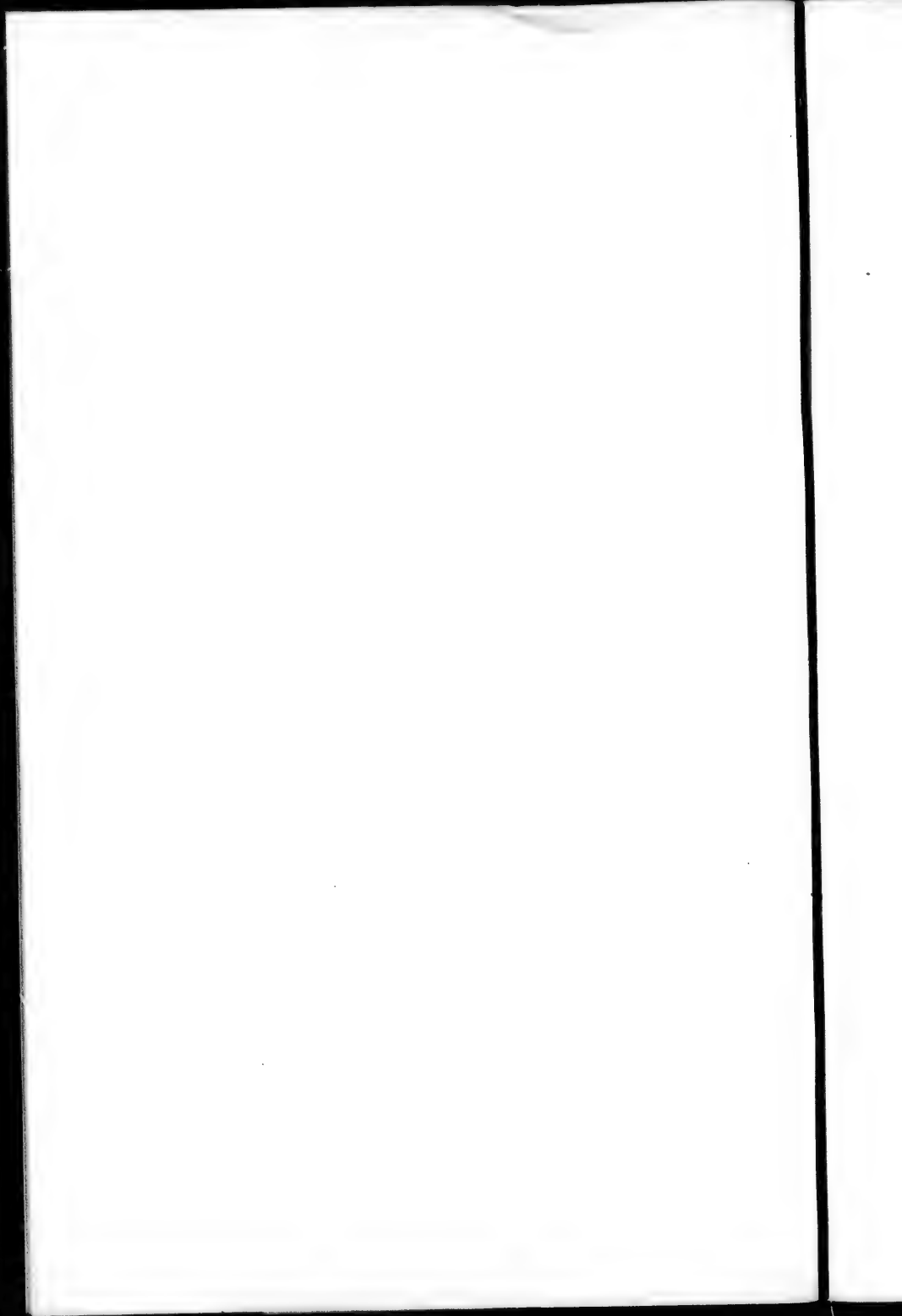
I.—GENERAL STATEMENT.

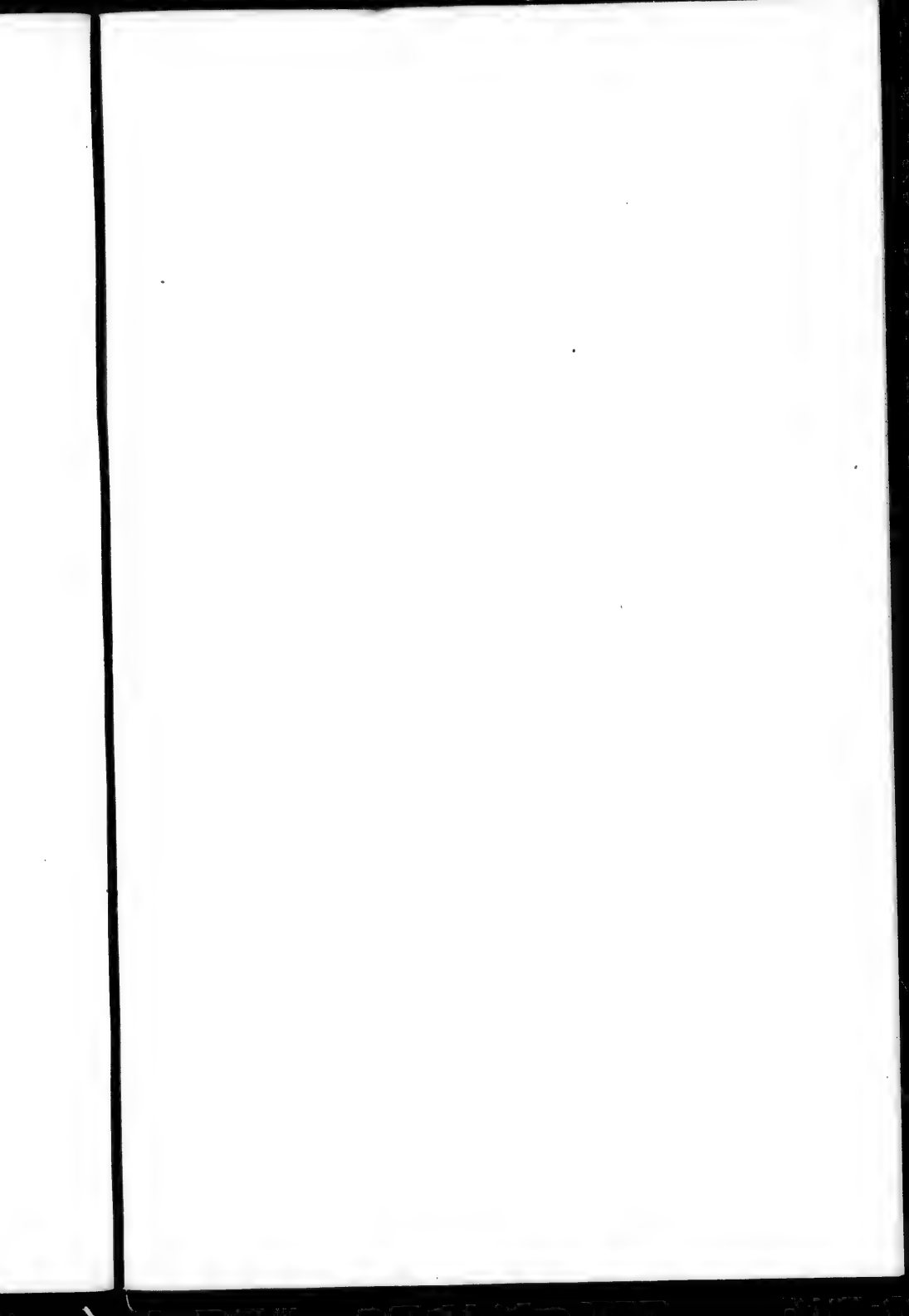
United States place special reliance
on Part II.

1. IT has become evident from the consideration of Part I of the United States' Case that but little reliance is placed by the United States on obtaining from the Tribunal of Arbitration decisions in favour of their views in regard to the first four points of reference, namely, those concerned with rights of jurisdiction over areas and over waters of the North Pacific Ocean, and especially over that portion now known as Behring Sea.

2. It becomes equally evident that the United States intend their appeal to the Tribunal to depend in the main on Part II of their Case. Part II comprises nearly three times as many pages as Part I—215 as against 75; and of the 1,430 pages of testimony, no less than 930 pages are devoted to matter referring to Part II, which deals exclusively with the entirely novel and strange assertion of a proprietary right in the fur-seal.

3. It is seen that, as a matter of fact, Part I of





the United States' Case culminates in the assertion (p. 85):—

"Quite independently of this jurisdiction, the United States has a right of protection and property in the fur-seals frequenting the Pribyloff Islands when found outside the ordinary 3-mile limit, and it bases this right upon the established principles of the common and civil law, upon the practice of nations, upon the laws of natural history, and upon the common interest of mankind."

4. The United States therefore put forward, as the main element in their Case, the fifth of the five points submitted to the Tribunal, viz.:—

"Has the United States any right, and, if so, what right, of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary 3-mile limit."

5. It is evident that the mere assertion of such a claim renders nugatory the several pleas in favour of jurisdiction over areas, whether based upon Treaties or international law; for it is a claim which can only be advanced on the supposition that the claims as to jurisdiction under the four previous points of reference would not and could not hold good.

It is, perhaps, worthy of note that the four volumes which contain the United States' Case, together with the Appendices, are headed "Fur-seal Arbitration," and not given the more comprehensive and official title—"Behring Sea Arbitration"—which, according to the Treaty under which the Arbitration takes place, specifically includes the first and main point in dispute, namely, "the jurisdictional rights of the United States in the waters of Behring Sea."

6. It will be observed that this new claim to a proprietary right in the fur-seal is advanced by the United States (p. 85) on two classes of pleas, which may be respectively termed the *Legal* and the *Industrial*. The *Legal* embracing "the principles of the common and civil law and the practice of nations," and the *Industrial* the laws of natural history, and the common interests of mankind."

1. *Legal Pleas.*

7. In regard to the "*Legal*" pleas, it is to be noted that these are never again mentioned in the Case, nor is any proof, or even argument,

advanced in their behalf. It may be well, however, to set out briefly the more obvious objections taken to any such pleas.

8. In reference to "the privileges of the common and civil law"——

[This for Counsel to deal with.]

a. Common and Civil Law.

β. Practice of Nations.

9. In reference to the "practice of nations," it is clear from the records that in no part of the world at any time has any nation ever claimed or exercised any such rights, whether in the North Pacific, the Southern Hemisphere, or the North Atlantic.

10. In regard to the North Pacific Ocean:—

(1.) *The Russians never asserted any such claim.*

Mr. Adams (22nd July, 1823), defines Russia's claim to be "the right of interdicting navigation or fishery of all other nations to the extent of 100 miles from the whole of that coast."

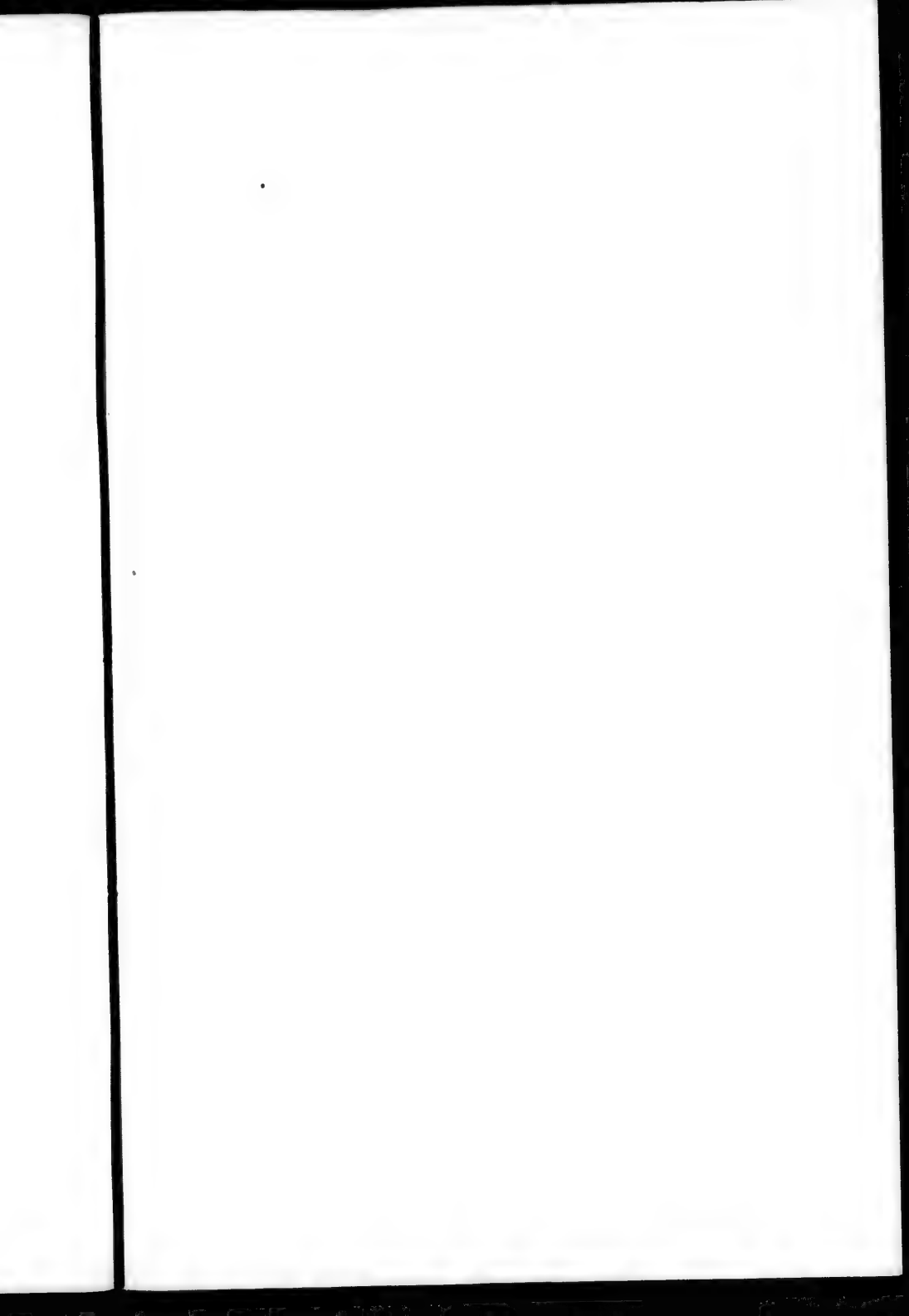
All the discussions arising out of the Ukase of 1799 and the Ukase of 1821, and culminating in the Conventions of 1824 and 1825, deal exclusively with rights controlling and prohibiting navigation, or fishing in and over certain areas. For instance, Baron Tuyl (6th December, 1824) claimed "that beyond 59°30 no foreign vessel can approach Russia's coasts or islands, *nor fish or hunt* within the distance of 2 marine leagues."

Again, M. de Poletica wrote to Mr. J. Q. Adams, 28th February, 1832 (American State Papers, Foreign Relations, vol. iv, pp. 861-862):—

"I shall be more succinct, Sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established."

Again, Count Nesselrode communicated to the Duke of Wellington a "Confidential Memorandum," dated the 11th (23rd) November, 1822, which contains the following passage:—

" It was, on the contrary, because she regarded those rights of sovereignty as legitimate, and because imperious considerations, involving the very existence of the commerce which she carries on in the regions of the



north-west coast of America, compelled her to establish a system of precautions which became indispensable, that she caused the Ukase of the 4th (16th) September, 1821, to be issued."

Property in seals is not so much as hinted at.

(2.) *The United States has never asserted or exercised this right.*

(i.) The first suggestion of any such claim is a hint in the letter of Mr. Bayard (December 1886). There has been no official notification of any such claim.

(ii.) The United States have never attempted to assert or enforce such a claim either by Legislative or Executive act, even against United States' sealing-vessels.

(iii.) The claim has never been put forward by United States' Counsel whether in the Alaska District Court or the Supreme Court in Washington, or in regard to any of the proceedings arising out of the seizure of sealing-schooners in Behring Sea.

(iv.) All seizures, whether of British or United States' vessels, have been made on distinct grounds of breach of Regulations within a given area, and never for larceny of seals.

(v.) The United States' Government in all the arguments advanced, and in all the precedents and examples cited, as, for instance, from St. Helena, Ceylon, Scotland, and Australia, confine their plea to questions of jurisdiction over areas which are quite beside the mark if property in seals is to be regarded as a serious claim.

(3.) *The Claim is only put forward on the Plea that now the Right is for the first time invaded.*

(i.) Mr. Phelps writes ("Harper," April 1891):—

"Precedents illustrate principles, but do not create them. They are only valuable so far as they display the application of principles to new cases. They do not arise out of rights but out of attempted wrongs. A right cannot obtain the sanction of a precedent until it is invaded. And an invasion of a right is not without redress, though it may never have been invaded in the same way before."

(ii.) Unfortunately for this theoretic contention, the records show that the right of user in the harvest of the North Pacific Ocean, including that portion named, in recent years, Behring Sea, has always been fully conceded by the territorial Powers, and especially in regard to seals, until the United States in the last few years has endeavoured to assert jurisdiction and dominion over certain specified areas,—a claim absolutely unmeaning and unnecessary if there existed any proprietary rights whatever in seals.

(iii.) The United States assert and press the claim that by inheritance from Russia they possess exclusive rights over an area of sea, whether the whole of Behring Sea or 100 miles from the coast-line. But rights of property in seals are unmeaning if area rights are con-

ceded, and area rights are unmeaning if property rights are conceded.

(iv.) The United States have consistently asserted area rights, as, for instance :—

(a.) 1889. *Act of Congress, March 2.*

"§ 3. That § 1965 of the Revised Statutes of the United States" (regulating the taking of all fur-bearing animals, including fur-seals) "is hereby declared to include and apply to all the dominion of the United States in the waters of Behring Sea."

(b.) 1891 and 1892. *The President's Annual Proclamation.*

"Hereby warn all persons against entering the waters of Behring Sea within the dominion of the United States for the purpose of violating the provisions of said § 1956 Revised Regulations."

(4) *The Practice of all Parties in the North Pacific Ocean is well known from the Records.*

(i.) From 1785 onwards British vessels coming from India sought furs in these seas for the Canton market, and the only method adopted by the Russians, who were then the territorial Power, with a view to monopolizing this trade, was to prevail upon the Chinese Government to grant the Russians the exclusive right to import furs from the American side of the Pacific Ocean.

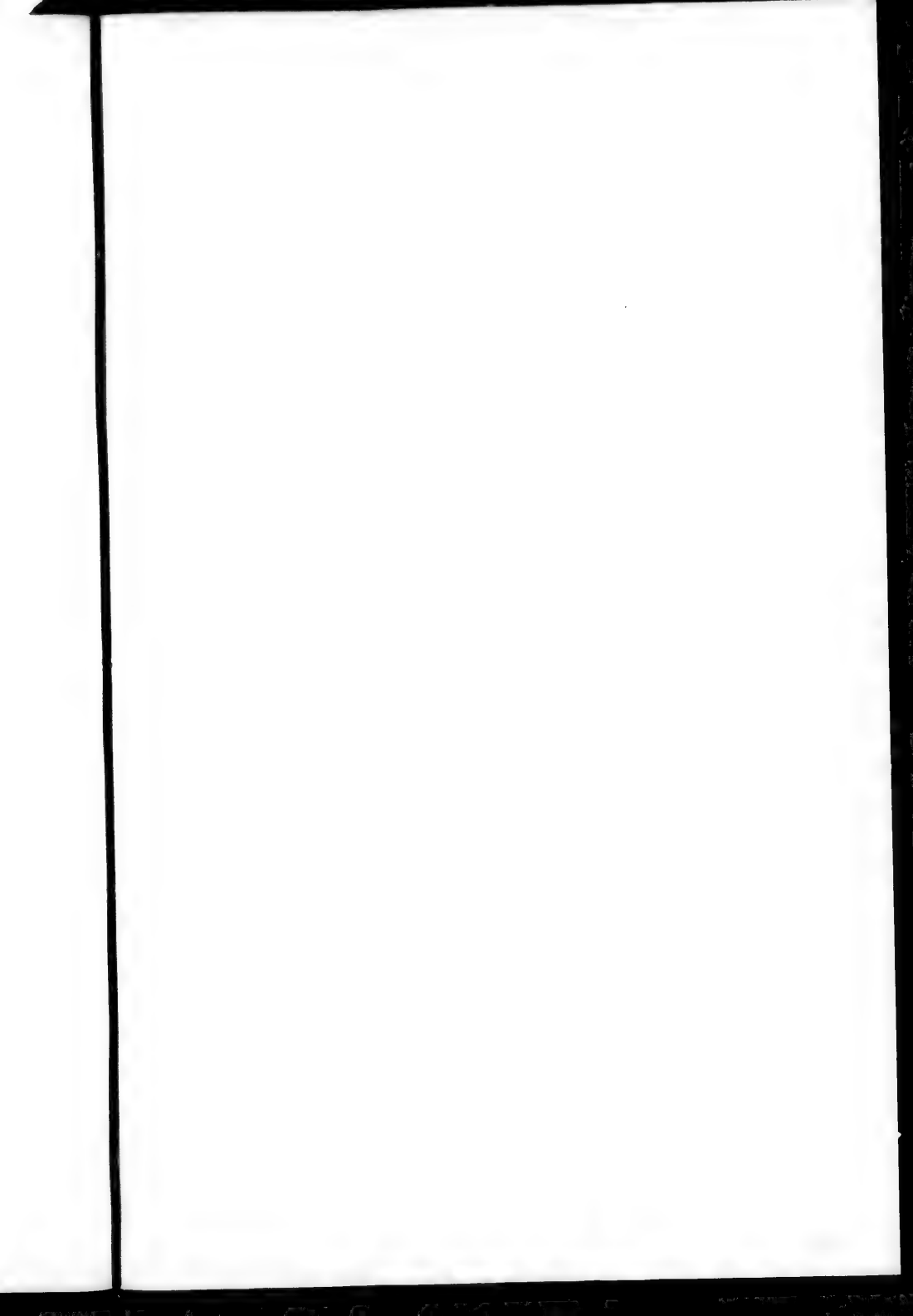
(ii.) In the Treaty signed between the United States and France in 1801 it is stipulated in Article XXVII: "Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds. . . . But the whale and seal fisheries shall be free to both in every quarter of the world."

(iii.) In 1804 (see Report of Congressional Committee on Petition for alteration of Navigation Laws in respect of seals).

(iv.) In the early part of this century the fur trade to China was considerable, and many furs were obtained in the North Pacific. Mr. Bancroft ("History of the Pacific State," xxxiii, p. 487) writes :—

"Trade was carried on to a small extent with the Spaniards at San Francisco even before the Treaty of 1824, though before that date the Russians were not allowed to enter the harbour for hunting purposes. At the Farallones, however, a station was established, which for a time was fairly profitable. From 1812 to 1818 about 8,400 fur-seal skins were obtained there, and it is stated that, before their occupation by the Russians, as many as 10,000 were taken on these islands in a single autumn. Later, the supply was gradually exhausted, but the ground was not totally abandoned until 1840."

(v.) Fur-sealing in the North Pacific was thus early an established industry, as was incidentally mentioned by



Captain Seammon, who states that in 1852 he proceeded to sea "in command of a brig bound on a sealing and whaling voyage."

Indeed, about this time (1840-50) American and other whalers were frequenting the waters north and south of the Aleutian Islands. The Behring Straits whaling industry commenced with the "Superior," Captain Roys, which was the pioneer ship, in 1848. In 1849 there was a fleet of 154 vessels.

The Russian authorities again wished to check this foreign competition, but the only means they could adopt was to debar whalers from refitting or provisioning in the ports of Alaska, except in cases of the utmost necessity. Professor Dall, in his book on "Alaska," writes, in 1870—claiming as one of the advantages of the purchase of Alaska that this hindrance to a great industry would be thereby removed.

(vi.) In 1868 the United States came into possession of the Pribyloff Islands, and the pioneers of the new régime were the sealers who at once landed and secured more than 300,000 skins.

When the Alaska Commercial Company was obtaining a Government lease of the islands they found them actually occupied by Connecticut sealers, under Morgan, with whom they combined forces to drive off Pflügel and others who had come up from Honolulu.

From the very first occupation of these islands the United States' authorities have complained of raids made on shore by sealing schooners. From 1870 to 1892 the Treasury Agents have complained persistently of inadequate protection against such raids.

From the earliest years we find the revenue cruisers instructed to prevent these raids, and to cruise in the Aleutian Archipelago to protect the seal fisheries and sea-otter hunting-grounds, but never a word of instructions is there to prevent sealing at sea. Indeed, in the year 1872, the Secretary of the Treasury, in reply to complaints that Australian and Hawaiian sealers were likely to seal in the Aleutian passes, writes:—

"I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose unless they made such an attempt within a marine league of the shore."

The British Minister at Washington reports to the Earl of Iddesleigh that in an interview on the 18th November, 1886, the Secretary of State, Mr. Bayard, said, in regard to the seizures of British sealing-vessels, "it would be a complicated question of jurisdiction, for he had been told that many of the seal skins found on board the British vessels were skins of seals which had not been shot, but clubbed, which proved that a landing had been effected."

(5). *The Right of the Natives to take Fur-Seal never disputed.*

(i.) Direct evidence of the acknowledged right of others to a share in this "seal property" is the absolutely unchallenged practice of the natives and residents all

along the coasts and islands, from Southern California to Alaska, to capture fur-seal and make a profitable trade out of the sale of the skins.

This has been a recognized industry from time immemorial, and proves conclusively that the residents all along these coasts have always exercised this "proprietary" right in the fur-seal of the North Pacific.

(ii.) Out of this aboriginal industry has developed the modern "pelagic" sealing in which, at the present time, several hundreds of natives are very profitably employed assisting white men to capture the seals while in their winter and spring habitats.

(iii.) It may be mentioned that the United States' Government, by municipal law, control and limit the taking of seals by the Aleuts on the Pribyloff Islands. But these Aleuts, on whose behalf so much has been claimed by the United States, are not natives, but merely imported labourers. They are mostly half-breed Aleuts from the Aleutian Islands, originally deported as labourers by the Russians to the seal islands, and even to Kamschatka.

(6.) *Territorial Jurisdiction alone asserted.*

In the North Pacific the free right to take seals has only been limited by Municipal Law of Trespass.

In the North Pacific Ocean the practice of the sealers from the first was in accord with the Franco-American Treaty of 1801, viz., that the seal fisheries shall be free to both parties in every quarter of the world. Indeed, it has only been by municipal legislation that sealers have been prevented exercising the right to take seals on shore.

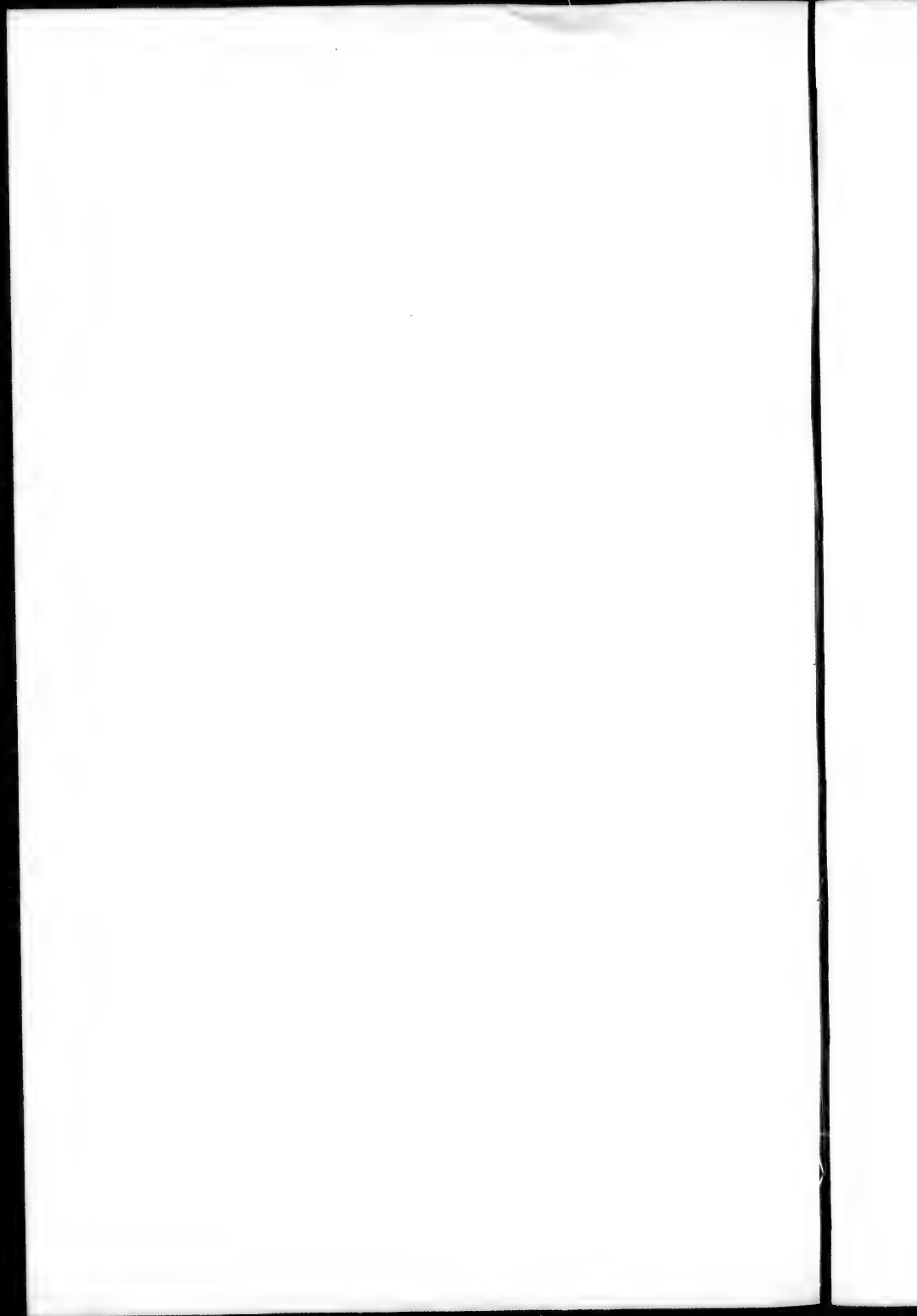
11. In regard to the Southern Hemisphere:—

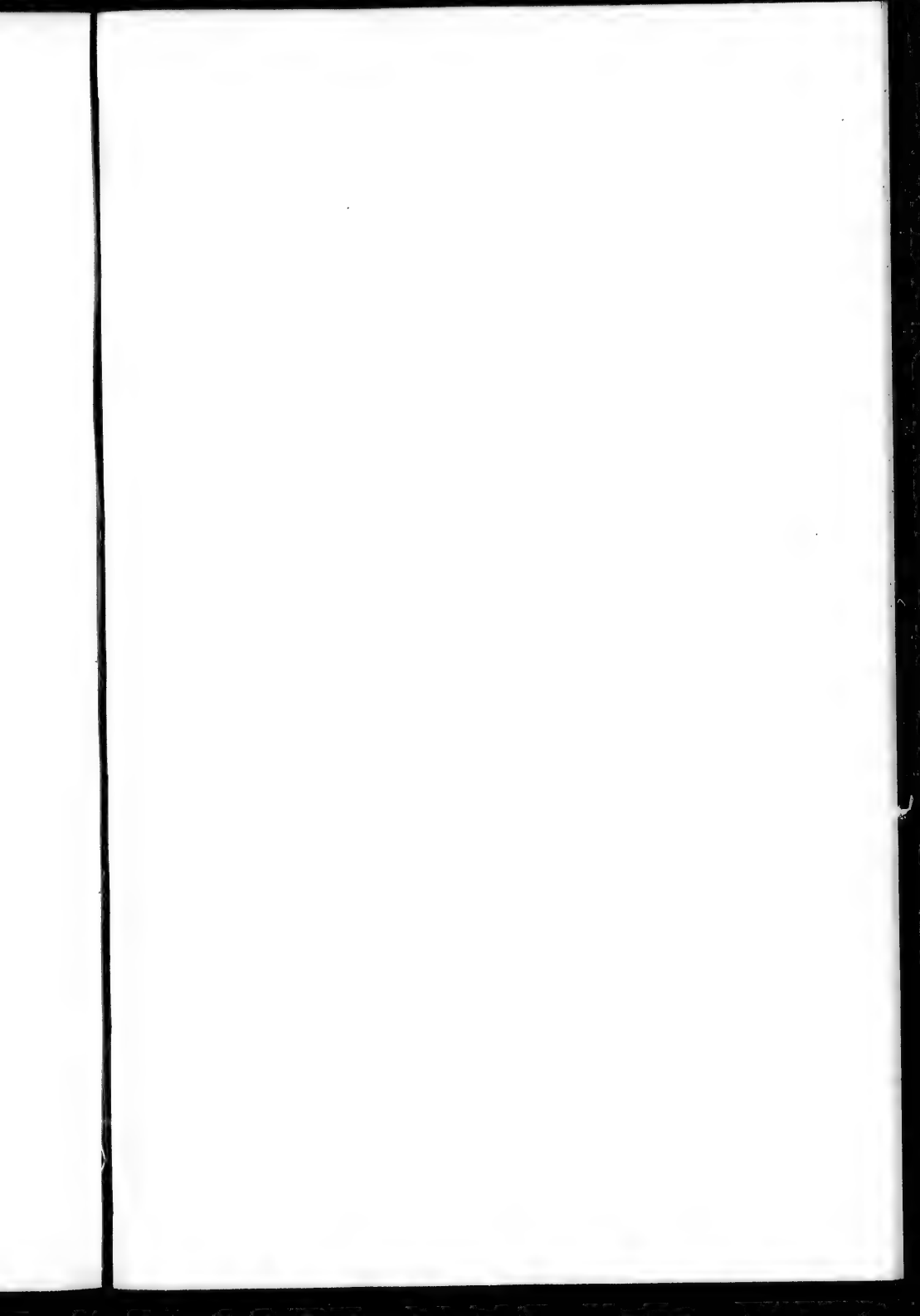
(1.) The fur-seal has been taken in the Southern Hemisphere in numbers far in excess of those taken in the North Pacific, and in all cases these seals have been exclusively taken on shore. And this has been done without regard to territorial sovereignty or ownership.

(2.) In the Southern Hemisphere it has always been customary for sealers to pursue their calling on any uninhabited coasts or islands, and the only restrictions upon this right are those which have comparatively recently been set up by certain Governments for the purpose of preserving the fur-seal from extermination, but in no case have these extended beyond the limits of territorial waters. It is to be noted that in South America, as in the islands belonging to Tasmania and New Zealand, all complaints of slaughter out of season, are confined to the depredations of United States' sealing-vessels.

(3.) The United States have specifically asserted this claim, which altogether excludes any idea of a national right of property in the seals themselves.

The United States' claims are most clearly set out in despatches of the United States' Chargé d'Affaires, Mr. Baylis, to the Buenos Ayres' Foreign Minister:—





(i.) 20th June, 1832:—

" The Undersigned is instructed and authorized to say that they utterly deny the existence of any right in this Republic to interrupt, molest, detain, or capture any vessels belonging to the citizens of the United States of America, or any persons being citizens of those States, engaged in taking seals or whales, or any species of fish or marine animals, in any of the waters or on any of the shores or lands of any or either of the Falkland Islands, Tierra del Fuego, Cape Horn, or any of the adjacent islands in the Atlantic Ocean."

(ii.) 10th July, 1832:—

"The United States of America desire no sovereign jurisdiction or exclusive privileges over the water or the soil of these regions. They only desire such privileges as they have been accustomed to exercise in common with other maritime nations

"The ocean fishery is a natural right which all nations may enjoy in common. Every interference with it by a foreign Power is a national wrong. When it is carried on within the marine league of the coast, which has been designated as the extent of national jurisdiction, reason seems to dictate a restriction if, under pretext of carrying on the fishery, an evasion of the revenue laws of the country may reasonably be apprehended, or any other serious injury to the Sovereign of the coast, he has a right to prohibit it; but as such prohibition derogates from a natural right, the evil to be apprehended ought to be a real, and not an imaginary one. No such evil can be apprehended on a desert and uninhabited coast, and therefore such coasts form no exception to the common right of fishery in the sea adjoining them."

(iii.) Mr. Robert Greenhow, Librarian of the United States' Congress, writes, in "Hart's Merchants' Magazine," February 1842, in regard to the claims of the Buenos Ayres Government in respect to the Falkland Islands:—

"To proceed another step in admissions. Supposing the Argentine Republic to have really and unquestionably inherited from Spain the sovereignty of the territories adjoining it on the south and the contiguous islands, that Government would still want the right to extend its 'Regulations respecting the Seal Fishery' to the unsettled portions of the coasts of those territories. That right was indeed assumed by Spain, with many equally unjust, which were enforced so long as other nations did not find it prudent to contest them. . . . The common right of all nations to navigate and fish in the open sea and in its indefensible straits, and to use their unsettled shores for temporary purposes, is now admitted among the principal Maritime Powers, and the stipulations in Treaties on those subjects are intended to prevent disputes as to what coasts are to be considered unsettled; what straits are indefensible; within what distance from a settled coast the sea ceases to be open," &c.

(4.) Similar claims have been always asserted by Great Britain. For instance, Lord Clarendon wrote to the

British Minister at Washington on the 21st September, 1854:—

"Her Majesty's Government . . . will continue to exercise the right inherent under the law of nations in the territorial Sovereign, and will hold themselves entitled, if they think fit, to prevent foreigners, to whatever nation belonging, from fishing for whale or seal within 3 marine miles of the coast, or from landing on any part of the shores of the Falkland Islands for the purpose of fishing or killing seals."

12. In regard to the North Atlantic:—

(1.) By international consent, property is recognized in the hair-seal only when captured.

(2.) The right of property in seals appears to be defined in but one place, namely, the Newfoundland Act, entitled, "An Act to regulate the taking of, and right of property in, Seals" (50 Vict., cap. xxiii), as follows:—

"§ 1. In any action or proceeding for the recovery of, or in relation to, the property in seals, or seal pelts, killed by persons engaged in or prosecuting the seal fishery in steam-vessels going from or coming to the ports of this Colony, it shall be held that no property, or right of property, shall have accrued except in seals killed, sculped, panned, or bulked by, and in the actual charge of, the claimants, or some person or persons for them, watching or engaged in carrying away such seals or seal pelts."

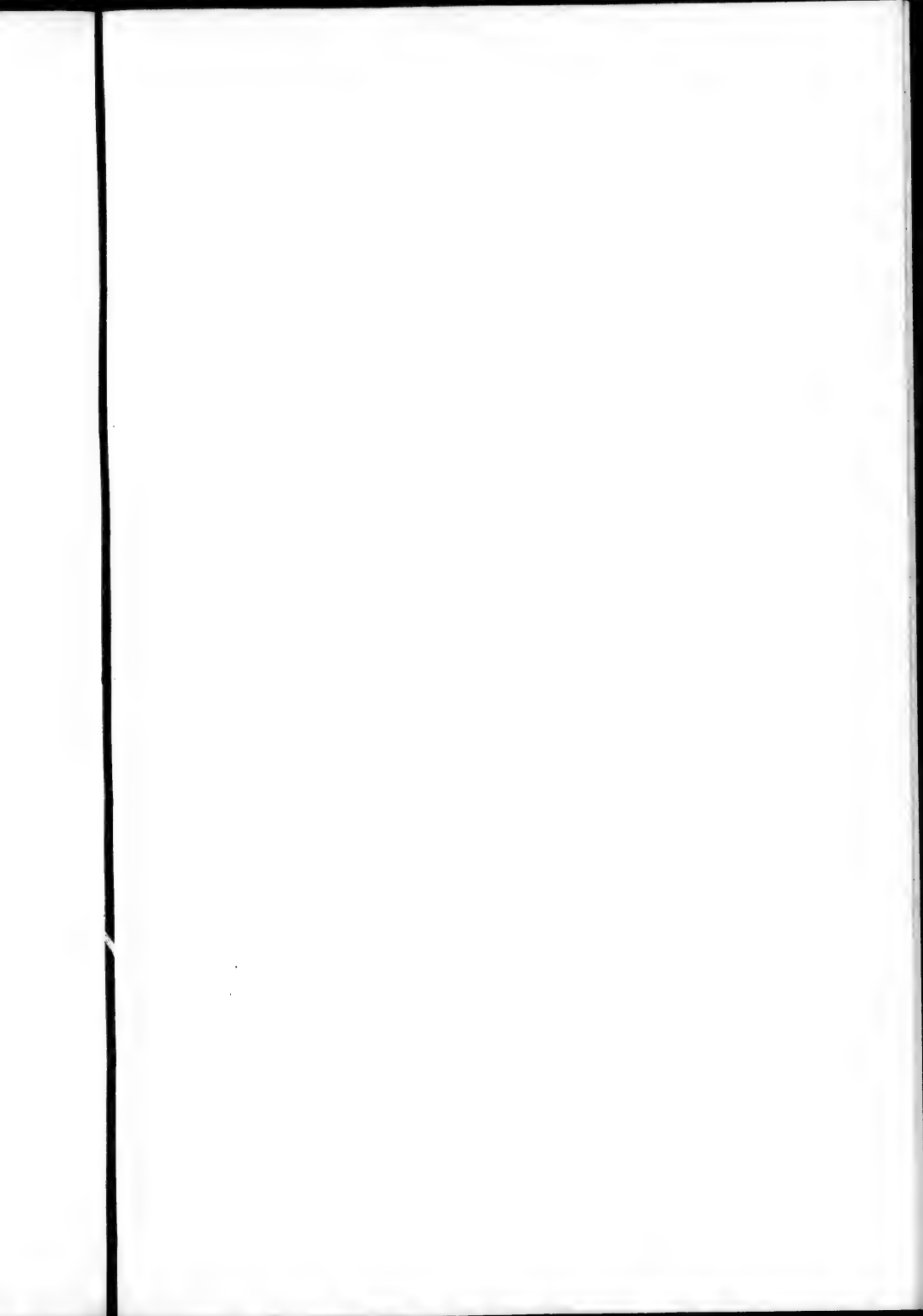
13. Thus it is seen that the "practice of nations," and especially of the United States, has been uniformly and universally in distinct opposition to this new claim of property in the fur-seal.

The practice of nations has been based upon the undeniable fact in natural history that the fur-seal, though necessarily resorting to the shore to breed, necessarily resorts to the deep sea to obtain food. In regard to the seals frequenting the Pribyloff Islands for breeding purposes, there is the additional reason of severe winter weather which compels them—a fact freely acknowledged in the United States' Case—to sojourn during the winter 1,300 to 2,000 miles to the southward in the latitude of California.

2. *Industrial Pleas.*

Why brought forward now.

14. In regard to the "*Industrial*" pleas it will be necessary to point out, *in limine*, that the United States' contentions are based on the Several Report of the two United States' members of the Joint Commission appointed



under the IXth Article of the Arbitration Treaty of the 29th February, 1892, and on a great mass of other evidence contained in two volumes.

15. But the Reports of this Joint Commission were, in accordance with Article VII of the said Treaty, to be laid before the Arbitrators only in the event of the determination of the primary questions as to the exclusive jurisdiction of the United States leaving the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in Behring Sea. It is expressly stated in Article IX that these Reports are to be drawn up so that they "may be in due form submitted to the Arbitrators should the contingency therefor arise."

16. It would appear, therefore, that in presenting this Report at this early stage of the proceedings, the United States are of opinion that the contingency will arise, and that the concurrence of Great Britain will, of a certainty, be necessary to the establishment of Regulations for the preservation of the fur-seal. In so far the United States are in thorough agreement with the view taken by Great Britain on p. 157 of the British Case.

17. We would here point out that, as foreshadowed in paragraph 5 of the Joint Report, the British Commissioners in their Several Report not only urge the necessity for measures of preservation, but set out in all detail the scheme of measures which they strongly recommend for adoption.

18. In examining the Industrial Pleas, it is found that the United States' Case is made to depend upon a chain of allegations, arguments, and calculations as to the habits of the fur-seal, and methods of capture, which are opposed in material details to the known facts of seal life.

19. It is therefore proposed on behalf of Great Britain first of all, and with a view to affording a complete view of the case, to deal *serialim* and in sufficient detail with the allegations and arguments of Part II of the United States' Case; and thereafter to give in summary the rejoinder to the "Conclusions" detailed (on pp. 295 to 303) of the United States' Case, so far as these refer to Part II of the Case.

Treatment of Industrial Pleas.

II.—GENERAL CHARACTER OF THE EVIDENCE ADDUCED BY THE UNITED STATES.*

The evidence.

1. As it is certain that the Tribunal of Arbitration will form their judgment not upon what the respective parties allege, but upon what they prove, it becomes necessary, before dealing *seriatim* with the propositions set out in Part II of the United States' Case, to note certain general characteristics of the evidence on which these propositions are based. It may be convenient that the attention of the Arbitrators should thus, at the outset, be directed to certain general features pervading this evidence.

2. The main evidence submitted by the United States in support of Part II of their Case is found under the headings:—

(i.) The Report of the United States' Behring Sea Commissioners.

(ii.) A full Memorandum by Dr. J. A. Allen.

(iii.) Replies from distinguished Naturalists.

(iv.) Affidavits from a variety of persons.

Omissions will then be dealt with.

(i.) Report of Commission.

3. The Report of the Commissioners will be found largely to consist of theoretic calculations, and to form, as a matter of fact, an argument very skilfully arranged to lead up to the one conclusion—that pelagic sealing must be put an end to. It is dated the 15th April, 1892, and professes to be based on personal observations and inquiries made in Behring Sea between the 28th July and the 10th August, 1891, supplemented by extended observations and inquiries conducted by subordinates.

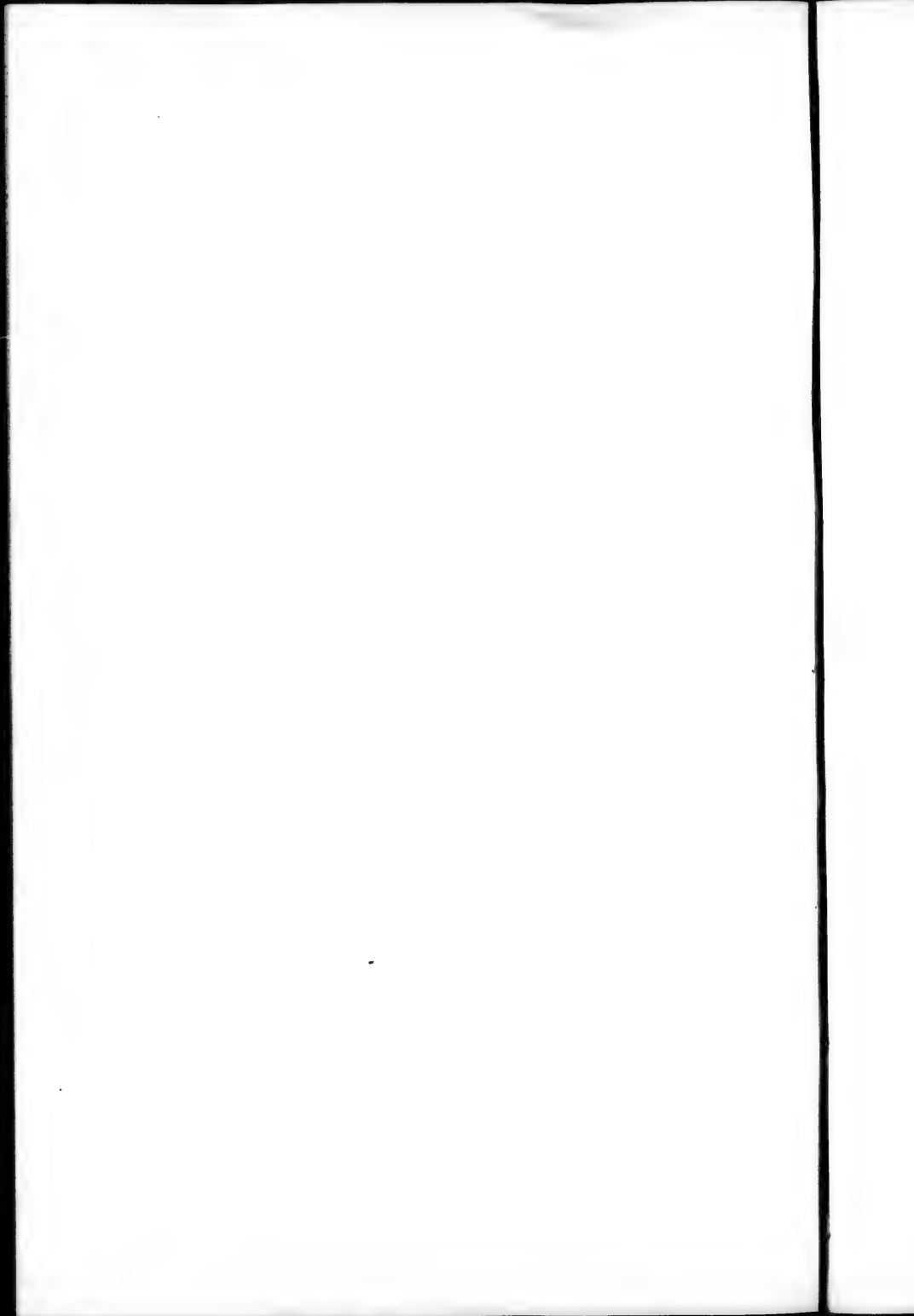
(ii.) Dr. Allen's Memorandum.

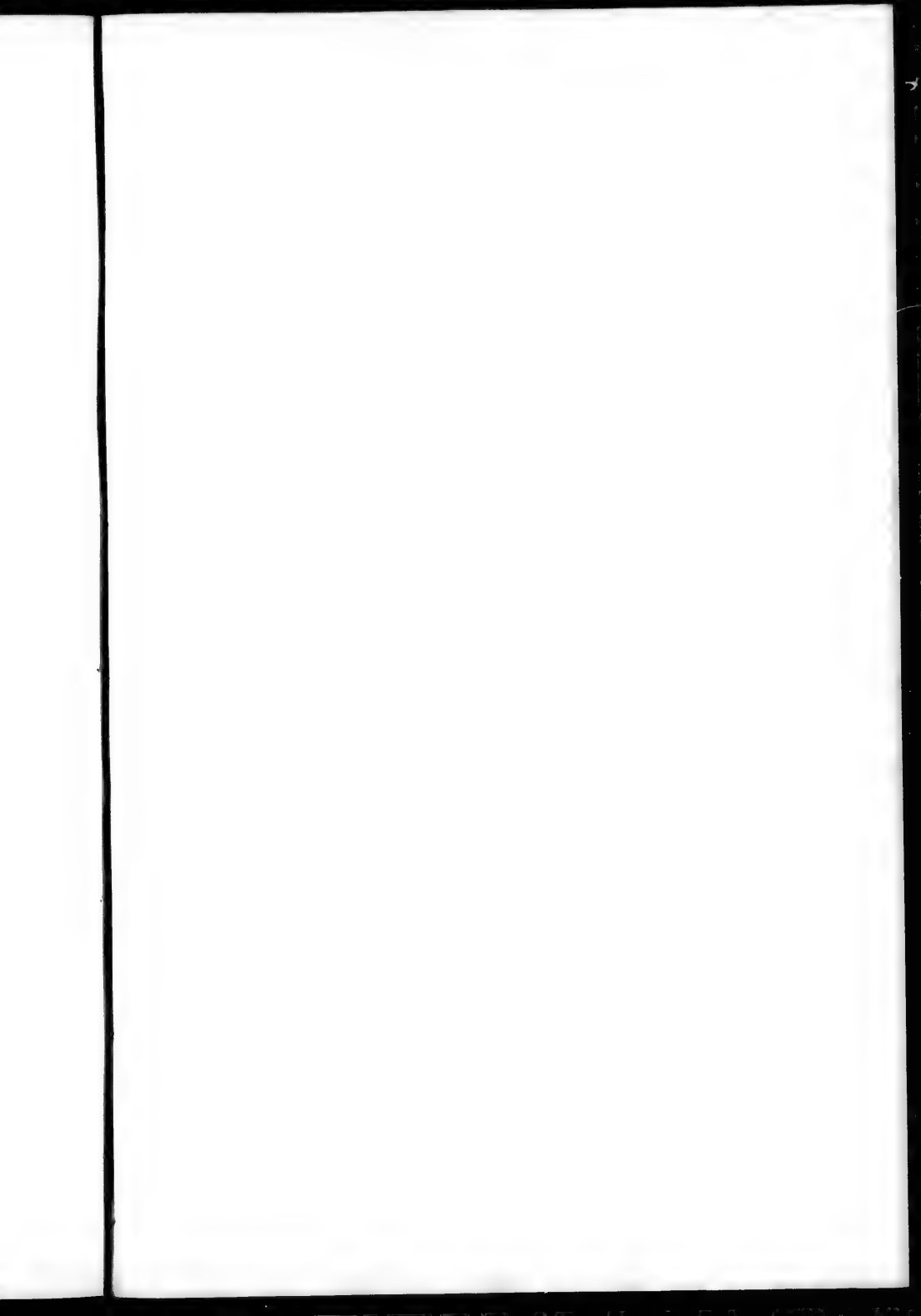
4. Dr. J. A. Allen has compiled an interesting and full Memorandum on many aspects and environments of seal life, but it is obvious from internal evidence that it was drawn up *post litem motam*. The Memorandum is avowedly a mere compilation from previous publications, and does not lay claim to be based on any special or new information. The statements on which the inevitable conclusion is based—that all the evils arise out of pelagic sealing—will be dealt with later on in detail.

(iii.) Replies from Naturalists.

5. In regard to the replies from distinguished naturalists to the specific inquiries of the United States' Government, serious attention is here

* This treatment follows the precedent of the "Alabama" Case.





called to the circular letter of Dr. Merriam, one of the United States' Commissioners. This letter is dated the 2nd April, 1892, and therein Dr. Merriam announces that he is commissioned by the United States' Government to report upon seal life; and he then proceeds to give his deliberate opinions, based upon his official investigations, upon various phases of that life, including all points which can lead up to the desired conclusion, viz., the abolition of pelagic sealing. This circular letter was distributed, through the Legations of the United States, to many distinguished naturalists, and replies solicited.

6. In the Arbitration Treaty it is, however, distinctly stipulated (Article IX) that the Reports of the Commissioners "shall not be made public until they shall be submitted to the Arbitrators." It remains, therefore, for the Arbitrators to call for adequate explanation as to the action of the United States' Government in permitting one of their Commissioners to distribute, through the United States' Legations, among foreign naturalists a summary of the United States' Report five months before its possible submission to the Arbitrators.

7. It is also to be noticed that this letter gives an entirely *ex parte* statement of the Case, and was calculated to result in judgments of the Case founded upon an imperfect knowledge of the facts, and therefore of little value.

8. That this consideration did have due effect is seen in six of the twelve replies. Six of the naturalists reply briefly that they have read the interesting Report of Dr. Merriam, and agree with his deductions. Five others, however, point out that nothing can be done without international action, while one, Professor Salvadori, of Turin, strongly asserts that too many seals have been killed on the islands.

There is no intimation as to the total number of naturalists to whom this *ex parte* statement was sent, or as to how many did not send replies.

9. Ancillary to this circular letter are two communications from Professor Huxley and Dr. Schlater respectively. It is perhaps noteworthy that Professor Huxley's evidence should be individualized by the statement of the United States' Government that it was given by him "as a scientist, and not as a retained advocate" (vol. i, p. 411).

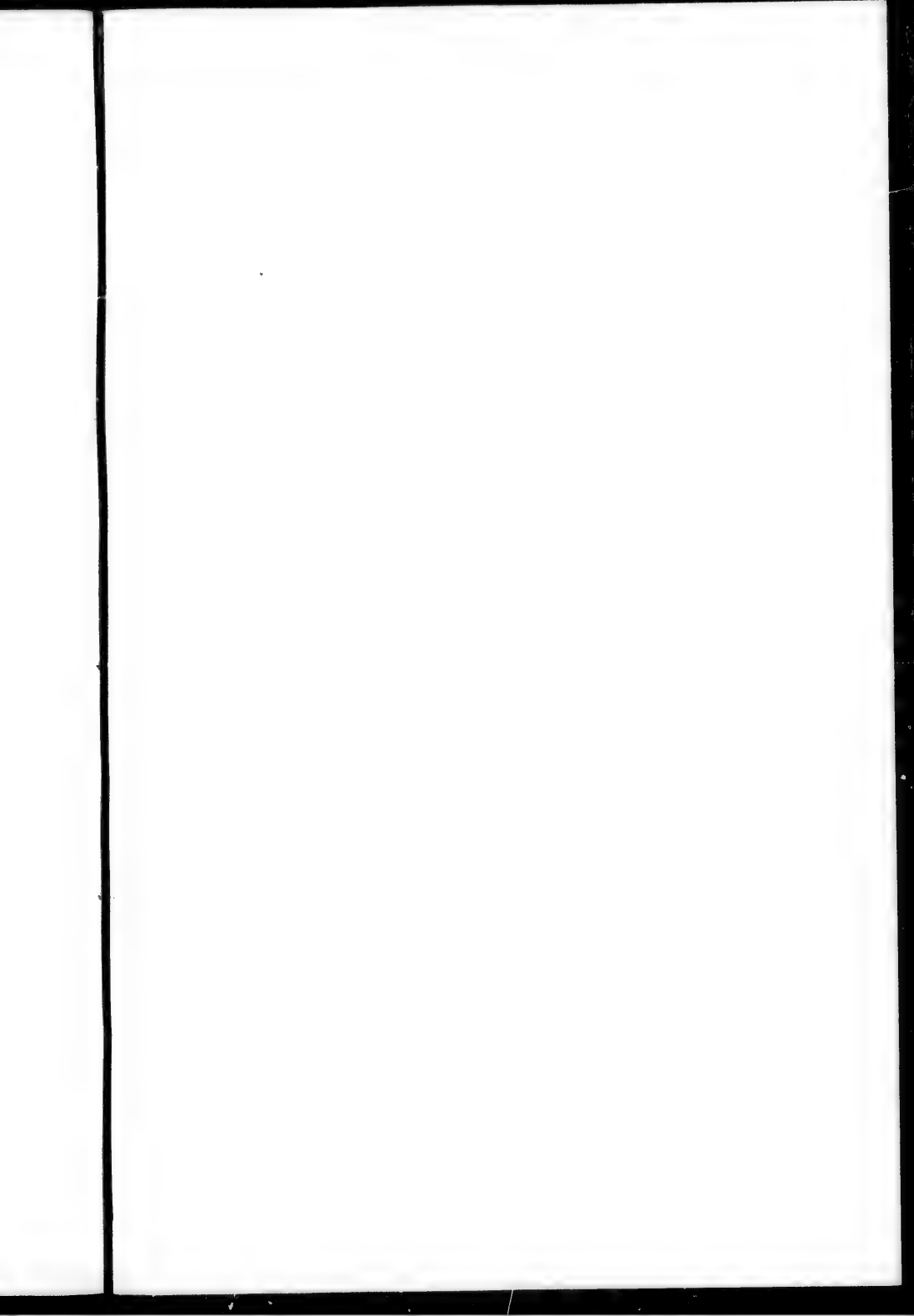
10. Professor Huxley (vol. i, p. 412), however, distinctly shows that any "ideal arrangements" of confining the killing to the Pribiloff Islands are quite "impracticable;" that the pelagic sealers "cannot be reasonably expected to give up their fishery for the sake of preserving the Pribiloff fisheries, in which they have no interest;" and comes to the conclusion that extirpation of the fur-seal is preferable to international squabbles, and that the only other solution is the control of both shore and sea sealing by mutual agreement in the interests of both parties.

11. Dr. Selater's affidavit is the only one given of those sought for in England in the spring of 1892 by Mr. Whitridge, of the New York Bar, and is simply and avowedly a statement of a naturalist's opinion on the facts as placed before him. It would be interesting to know what was said by the other naturalists to whom application was made by Mr. Whitridge for their opinions.

(iv.) Affidavits by various persons.

12. In regard to the long array of affidavits composing vol. ii of the Evidence, it is to be noticed that every affidavit, without exception, was taken in 1892, *post litem motam*, and after the United States' Commissioners had arrived at their conclusions. It is not surprising, therefore, to find in all these affidavits a close correlation of testimony and conclusions. In the great majority of cases, indeed, the deponents seem only too eager to state first of all the conclusion that pelagic sealing must be put an end to, and only afterwards to endeavour to afford proofs. But, as will be subsequently pointed out in detail, in these affidavits, as in previous classes of evidence, there is much information which directly conflicts with the main contentions of this portion of the United States' Case.

13. In general, a perusal of these affidavits shows them to be merely replies to one series of leading questions, and in many cases little more than signatures affixed to copies of a list of statements. Precisely the same phrases and terms and language are used by natives and whites, seamen and landmen, captains and boat-pullers, Treasury Agents and Indians. There is, for instance, a very noteworthy uniformity in the replies alike of illiterate Aleuts, Government officials, and expert white sealers, that "the loss of seals in drives is less than 1 per cent." It would be interesting to know what is the



precise meaning attached by an Aleut to the term "less than 1 per cent."

14. Again, numerous replies are from Indians unable to sign their own names, and though the statements are in English, there is no evidence to show that these Indians understood or spoke English, or that they had any knowledge of the contents or the meaning of the documents to which they attached their marks.

15. It may be noted, also, that two deponents (pp. 198 and 201) actually place on affidavit their account of the inquiries conducted by the British Commissioners in their presence, and when they were acting as interpreters.

16. As an instance of the misleading character of these affidavits, it may be pointed out that in all the evidence taken from the Indians on the north-west coast of America there is a remarkable uniformity in the reply, "I think the Great Father should stop all schooners." Nothing is given to show that this is merely the Indian's appeal for protection against his most formidable rival. The Indians repudiate any desire to allow their own rights of pelagic sealing to be in any way curtailed; all they wish is to be rid of dangerous rivals. Still less had these Indians any knowledge whatever of the slaughter annually proceeding on the breeding-islands.

Again, it is to be noticed that forty-one out of the forty-two deponents in Cook's Inlet (pp. 223 to 233) are careful to explain that they have no personal experience of fur-seal hunting.

17. It is also to be remembered that these affidavits were the result of purchase.

[Here follows any Canadian evidence to this effect.]

18. Perhaps the most serious general characteristic of these volumes of Evidence is the negative point of the intentional exclusion of a great mass of readily available, thoroughly reliable, contemporary record.

The annual Reports of the resident Treasury Agents on the breeding-islands, carefully and regularly transmitted ever since 1870, are conspicuous by their absence.

Still more remarkable is the fact that there is not even the slightest allusion to the elaborate Reports made in 1872-73, and again in 1890, by the Special Treasury Agent, Mr. Elliott, whose "Monograph on the Fur-seal" has become the text-book on the subject with naturalists. It will

Omissions.

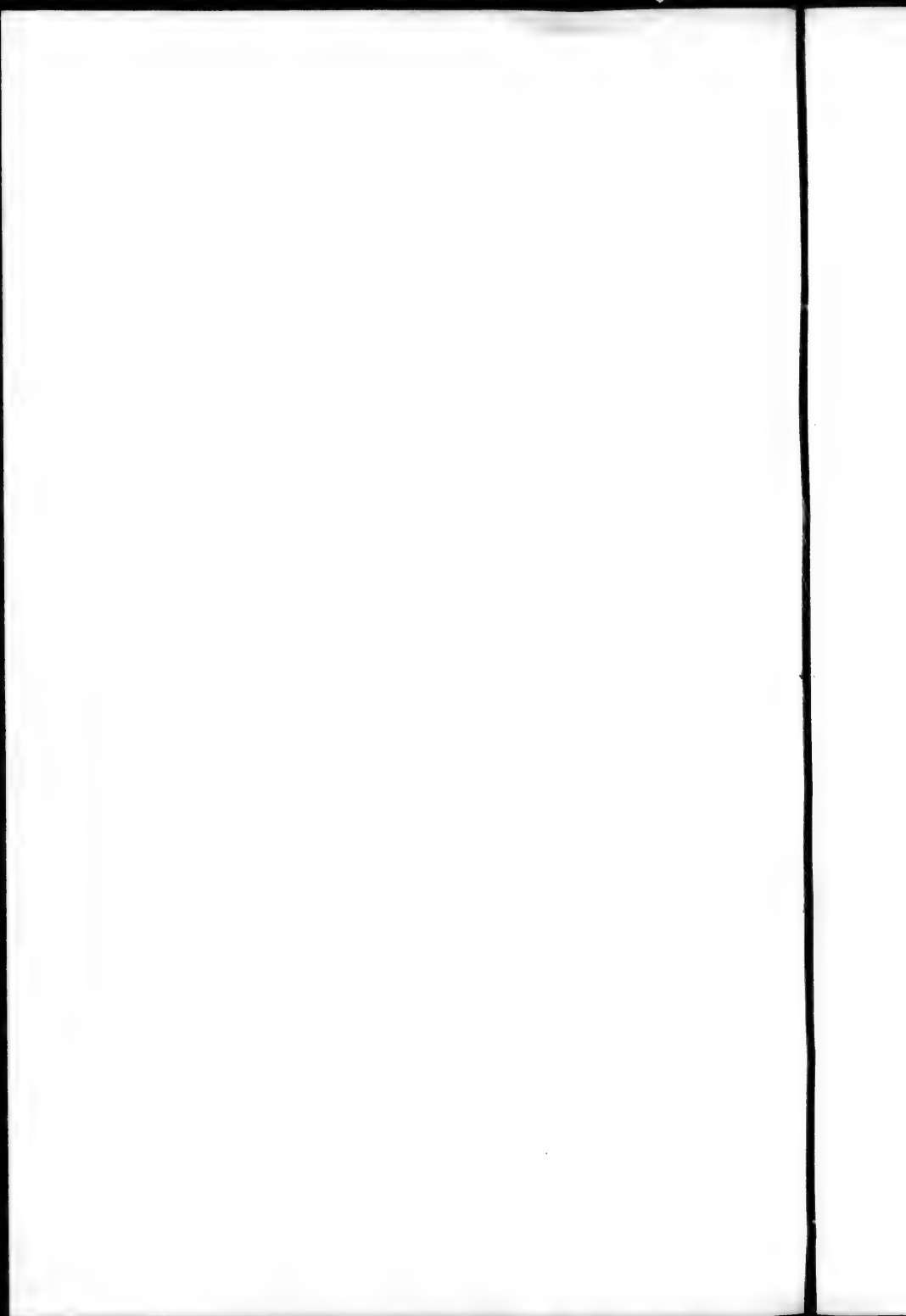
have been noticed that the British Commissioners obtain a great deal of information from Mr. Elliott's elaborate work, done on the spot amongst the seals.

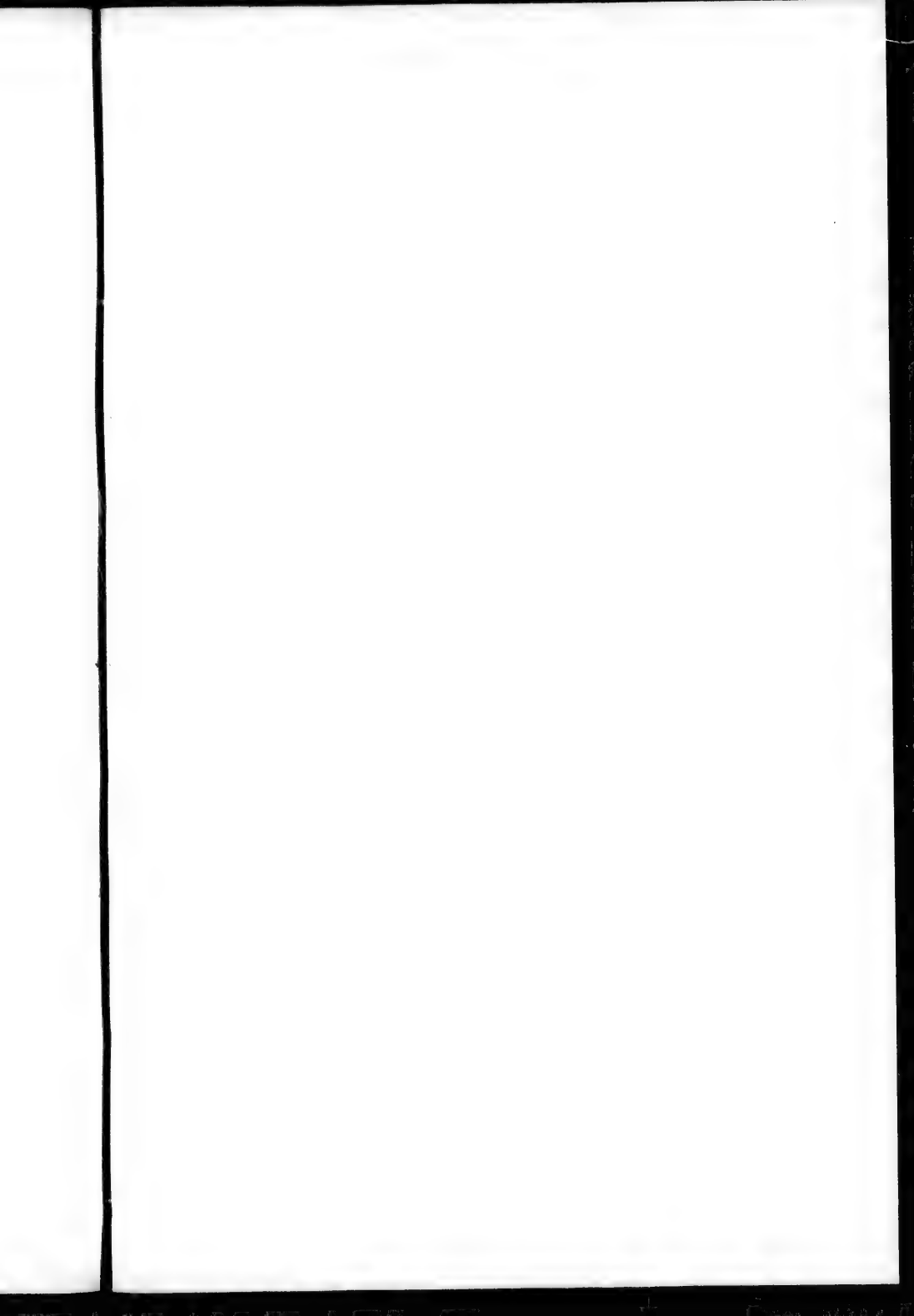
19. It is certainly desirable that the Tribunal should examine Mr. Elliott's Report on the state of the Seal Islands in 1873 and 1890, especially as they contain the only detailed reports on seal life made after personal investigation by the same authority, with a sufficient interval of time. They also happen very appropriately to be dated at the commencement and close of the very period under review.

20. It has to be stated that these contemporary records afford a great mass of absolute evidence directly opposed to the contentions advanced in the United States' Case, as, for instance, on the important points of dearth of males, evils of driving, and so forth. Again, the annual Reports of the Treasury Agents never once mention "dead pups," although in the affidavits many of the Agents are curiously unanimous in their afterthought, recollected in 1892, that the dead pups were found each year in numbers which tallied precisely with the number of seals taken by the schooners!

21. It is specially significant to note that the main conclusions to be derived from these contemporary records are, however, dealt with in very summary fashion in the United States' Case. But the treatment is only by anticipation and incidental. And the Tribunal will need, for a full understanding of these arguments, the exhibit of these "contemporary" Reports of the various Treasury Agents, and especially the full Report for 1890 by Special Treasury Agent Elliott.

22. On the other hand, the evidence on which the British Case is based was in the main collected by the British Commissioners, who were conducting their local inquiries from the 23rd June till the 6th October, 1891, before they had arrived at their conclusions as to the facts of seal life or the measures necessary for its preservation. Great attention was given by them to all contemporaneous records and reports originating in the actual localities. In short, it will be seen that the Report of the British Commissioners is based upon facts and records, and not made to rest upon mere allegations from memory, or theoretical calculations.





III.—THE UNITED STATES' PROPOSITIONS.

1. Before summarizing the specific rejoinders of Great Britain to the final propositions advanced by the United States it will be convenient to comment *seriatim* on the propositions advanced in Part II of the Case, and which are there placed under the following headings:—

- (a.) Habits of the Alaskan Seal (pp. 89-129).
- (b.) Management of the Rookeries (pp. 129-164).
- (c.) Decrease of the Seal Herd (pp. 165-186).
- (d.) Pelagic Sealing (pp. 187-217).
- (e.) Protection and Preservation (pp. 218-263).
- (f.) The Seal-skin Industry (pp. 264-287).

2. These headings lead up specifically to four of the nine final propositions which are put forward by the United States (pp. 295-298) as proven by the evidence advanced. While commenting upon these headings it will be well to have in mind the gist of these four final propositions, which is as follows:—

Proposition I. That the Alaskan fur-seal is a domesticated product of United States' territory.

Proposition II. That its present existence is due wholly to the protection of the United States, and the serious decrease in numbers is due wholly to pelagic sealing.

Proposition III. That pelagic sealing is illegitimate, improper, wasteful, and wholly destructive of the sealing industry.

Proposition IV. That the profits, if any, of pelagic sealing are out of all proportion to the destruction of the seal-skin industries in other countries.*

(a.) *Habits of the Alaskan Seal* (pp. 89-129).

3. The assertion that the Pribiloff Islands are "*the home of the fur-seal*" (p. 89) is not supported or proved either by argument or evidence. Page 89.

4. Some semblance of proof is indicated in the statement that from May to November the majority of the seals are on shore on these islands. But this statement, which after all involves only a temporary sojourn ashore for at most six months, is contradicted by the facts of arrival and departure of the seals as stated in

General Plan.

The home of the fur-seal

Period ashore.

* All quotations from the United States' Case are printed in *italics*.

other passages in the Report itself and in the evidence.

5. Thus, on p. 108, the bulls are described as arriving at the islands in the latter part of April or beginning of May, and that about the 1st August (p. 112) "*some of the bulls begin to leave the islands and continue going till the early part of October.*" Thus the bulls begin to leave after a sojourn of three to three and a-half months on shore.

6. Of the cows it is stated (p. 108) that "*the great majority, however, do not haul up until the latter part of June, and the arrivals continue till the middle of July.*"

Their departure is dealt with in more general terms, the assumed cause being given as the fact. "*The length of time a pup is dependent upon its mother compels her to remain upon the islands until the middle of November.*" As the pups differ in age as much as three or four weeks, so presumably would the departure of the cows, the majority therefore leaving after a sojourn of at most three and a-half to four months on shore, the latest arrivals landing in the middle of July, and leaving in the middle of November.

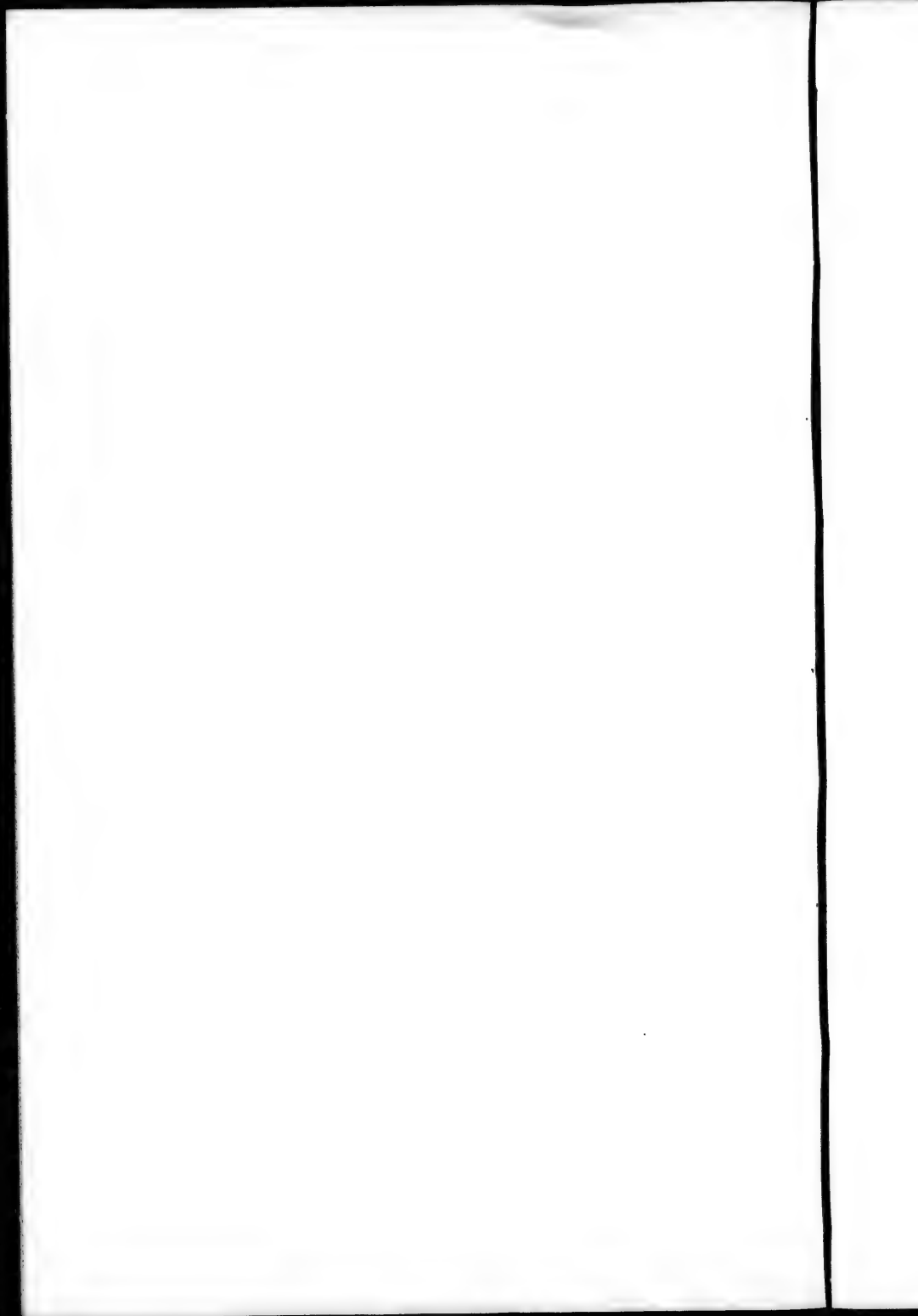
7. In regard to the younger non-breeding seals the statement (p. 120) is that they begin to haul out in the latter end of May, and that their departure "*generally takes place at the same time as the cows,*" which would imply a sojourn on the islands of five months.

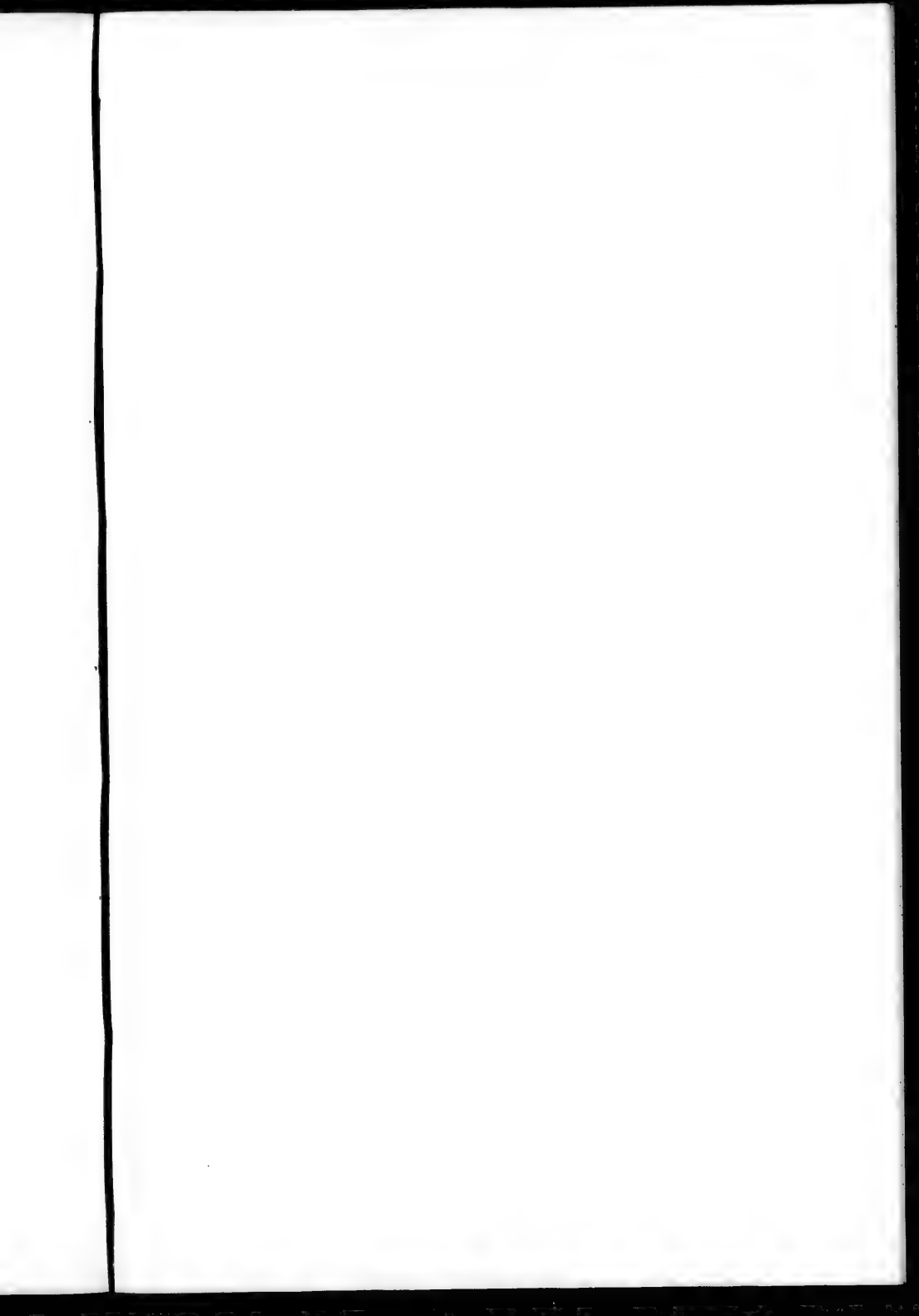
8. But the evidence of the experts on the breeding-islands invariably gives shorter limits of time for the sojourn of the seals on the islands.

Thus, Mr. Fowler, the agent of the lessees, states (vol. ii, p. 25): "*The bull seals arrive on the islands from the latter part of April till the 15th June, and most all of them leave in August and September. . . . The cows come to the islands between the 1st June and the 20th July, and commence leaving in October. . . . The young male seals come in May or June. . . . The pups are born soon after the cows arrive and remain until October or November.*"

Mr. McIntyre, Treasury Agent (vol. ii, p. 41), says: "*The pups are born in June and July; . . . early in November the pups leave the island.*"

Mr. Norton, agent for the lessees and Treasury Agent, says (vol. ii, p. 67): "*By the middle of*





September the systematic organization of the rookeries is entirely broken up, and the major part of the seals have left the land."

Jacob Kotchooten, a native sealer, says (vol. ii, p. 131): "The most of the bulls leave the island in September, and the cows in the last of October and early in November."

Anton Melovedoff, another native, says (vol. ii, p. 144): "The bulls reach the islands late in April or early in May, . . . stay till August or September."

9. But during this period of resort to the islands the seals are not the whole time ashore. Thus in the United States' Case (pp. 118, 119) the correct statements that "*the great distance of the feeding-grounds from the islands,*" and "*the distance that the seals wander from the islands during the summer in search of food,*" are ample proof that during July, August, and September, that is, in the midst of the period when the seal is supposed to be under control on United States' territory, the fur-seal in great numbers are enjoying full freedom away at sea entirely out of all control.

10. No mention is made in the United States' Case of the "stagey season," which usually lasts from four to six weeks, commencing in the middle of August. At this period, the seals which have remained continuously ashore commence to shed their coats, and are then not inclined to go into the water. The cause generally given is remaining too long out of the water, the essentially pelagic animal thus suffering from unnatural environments. It is also proof that a great many seals of all sexes do not go to sea at all during their two or three months' sojourn on shore.

Stagey season

11. Thus the general tendency of the evidence proves that the different classes of seal resort to the islands at different dates and for different periods. Moreover, of the classes that are ashore, with the exception of the breeding seals, it is probably true that at least one-third of their number are at any given time disporting themselves in the waters immediately adjacent to the rookeries. But while it is true to say that the great body of the seals commence to come ashore in May and June, and to leave in September and October, it will be seen that no one class of seals resorts to the shore for much more than three or four months in the year.

Period at sea.

12. We find this fact corroborated on p. 238 of the United States' Case, when the statement is made, "*for at least nine months of the year this herd is exposed to the relentless and untiring pursuit of the pelagic hunter,*" a pursuit which can only be made effective so long as the fur-seal is at sea and away from the shore.

13. Wherefore, so far as regards the relative periods spent on shore and at sea respectively, the fur-seal is essentially a pelagic animal, having for the greater part of each year no occasion or desire to approach the land, and, as a matter of fact, remaining away at sea. His home for the greater portion of the year is in the water and not on the land.

14. Further than this, it is pointed out in the United States' Case (p. 295) that the fur-seal is compelled to resort to waters very distant from the breeding-islands "*for food and to avoid the rigour of winter.*" The Pribyloff Islands do provide the fur-seal with the necessary solitude, climate, and shores for breeding purposes. But these islands, even together with their territorial waters, do not and cannot supply the fur-seal with food or with the climatic conditions necessary to his existence during the autumn, winter, and spring. These islands are, therefore, the temporary breeding-place or nursery of the fur-seal, and he "*necessarily migrates*" (as is pointed out in the United States' Case, p. 122) between this summer habitat and his winter habitat, distant 1,500 or 2,000 miles to the southward.

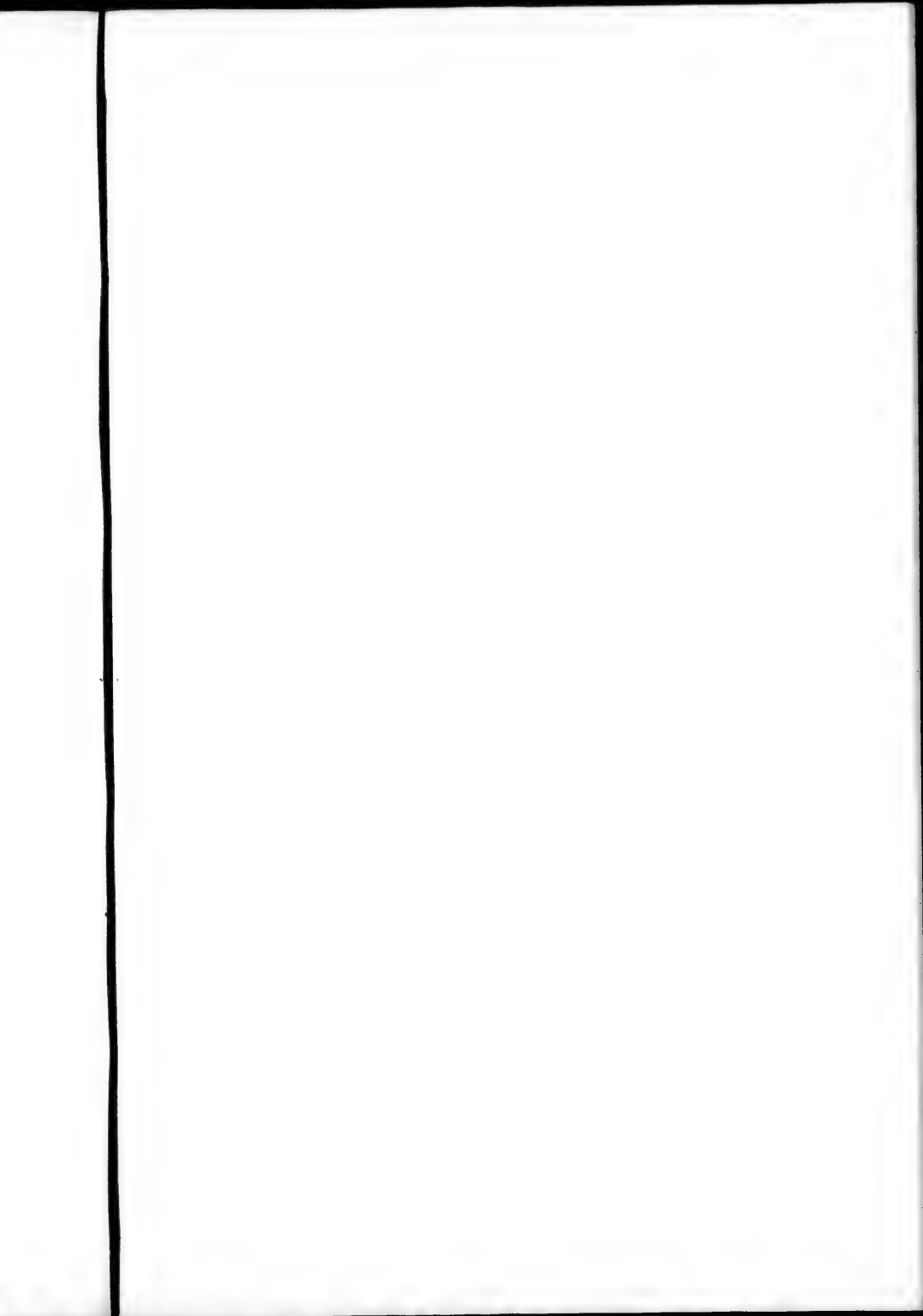
15. It is to be borne in mind that could the seals be forcibly confined to the immediate vicinity of the Pribyloff Islands, they would assuredly die off in one year. But if they were forcibly prevented landing on these islands, they would seek and find other breeding resorts. Thus the excessive disturbance and slaughter on these islands in 1868 and 1869 resulted in unprecedented numbers of seals visiting the bays and harbours along the British Columbia coast in the following years.

16. Allen, 365.

Definition of home or habitat.

17. The opinions of leading naturalists as to what constitutes the home or habitat of migratory animals is well summed up by the distinguished naturalist A. R. Wallace ("*Geographical Distribution of Animals,*" vol. i, pp. 23-28):—

"It is an ascertained fact that many individual birds return year after year to build their nests on the same



spot the birds which return in the spring are as a rule not more numerous than those which came in the preceding spring, whereas those which went away in the autumn were two or three times as numerous. It is assumed by some writers that the breeding place of a species is to be considered as its true home rather than that to which it retires in winter; but this can hardly be accepted as a rule of universal application; . . . for the purpose of the study of geographical distribution, therefore, we must, except in special cases, consider the true range of the species to comprise all the area which it occupies for any part of the year."

18. The statement that the requisite conditions Page 89.
for fur-seal breeding-places "are found at the *Pribilof Islands* and nowhere else in *Behring Sea* or the *North Pacific*, save at the *Commander Islands*," is an allegation for which no proof whatever is advanced. Indeed, the facts are quite to the contrary. Robben Island, near Saghalien Island, in the Okhotsk Sea, has likewise been, ever since its discovery, occupied as a breeding rookery, and large numbers of skins have been obtained from it, notwithstanding the injurious effects produced by raids upon its shores, which have been chiefly attributable to citizens of the United States. Considerable breeding rookeries likewise existed on several of the Kurile Islands within the territorial jurisdiction of Japan and Russia, and some of these still survive, though in much diminished form, consequent on the effect of raids and illegal and impolitic destruction on the shores of these islands themselves. It is, moreover, certain that the fur-seal formerly resorted for breeding purposes to several places situated on the coast of British Columbia, and it is highly probable, if not absolutely certain, that a considerable number of young seals are still annually brought forth on various outlying parts of this coast.

19. The same climatic conditions are known to exist on all the islands of the North Pacific to the northward of, say, latitude 40°, until in the far north the ice remains too late in the spring and returns too soon in the autumn. Precisely similar geological formations, similar vegetation, and similar climate are found on the American and Asiatic coasts, and on all the islands off these coasts, and along the Aleutian chain. Those familiar with these countries know of many bays and beaches precisely similar to the great variety of sites frequented by the fur-seal on the *Pribilof*

and Commander groups. Moreover, a qualified admission to the effect is made by the United States' Commissioners in their Report (p. 331) when they state: "No islands to the northward or southward of the Pribyloff Islands, with the possible exception of limited areas on the Aleutian chain, are known to possess the requisite combination of climatic and physical conditions." As a matter of fact, which is not disputed, the fur-seal have bred and still breed on many of these islands and coasts other than the islands named.

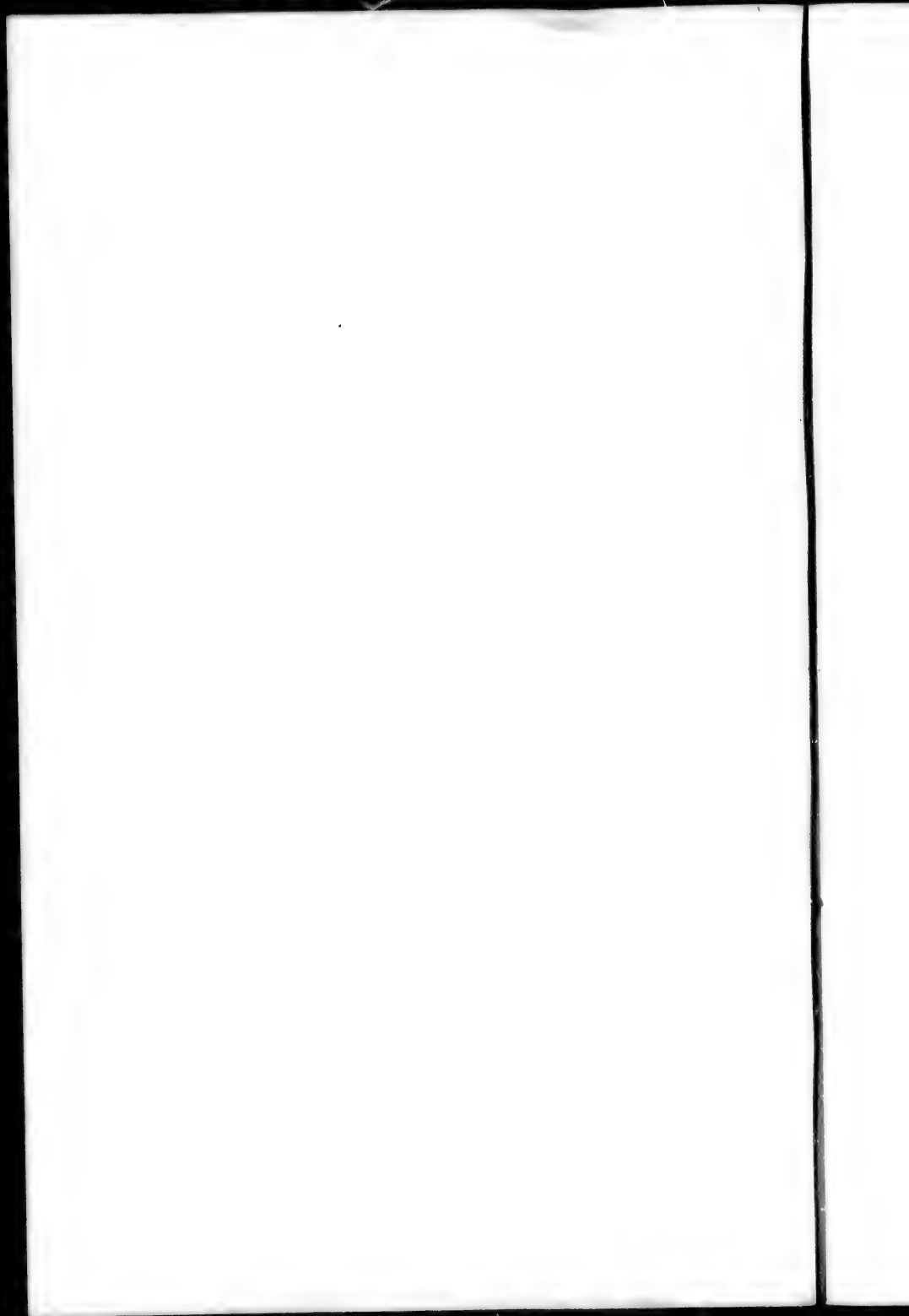
20. The statement is true (p. 90) that similar climatic conditions have also been observed to prevail at the coasts and islands once frequented by vast herds of fur-seals in the Southern Hemisphere. But it must be borne in mind that these southern breeding-places of the same species of seal (*Otaria*) ranged from San Felix, Masáfuera, and Lobos Islands, and Walfish Bay, in latitude 25° to 35° south, down to Cape Horn, the Sandwich Islands, Kerguelen group, &c., in latitude 50° to 60° south, embracing a notably wide range of geographical and climatic conditions.

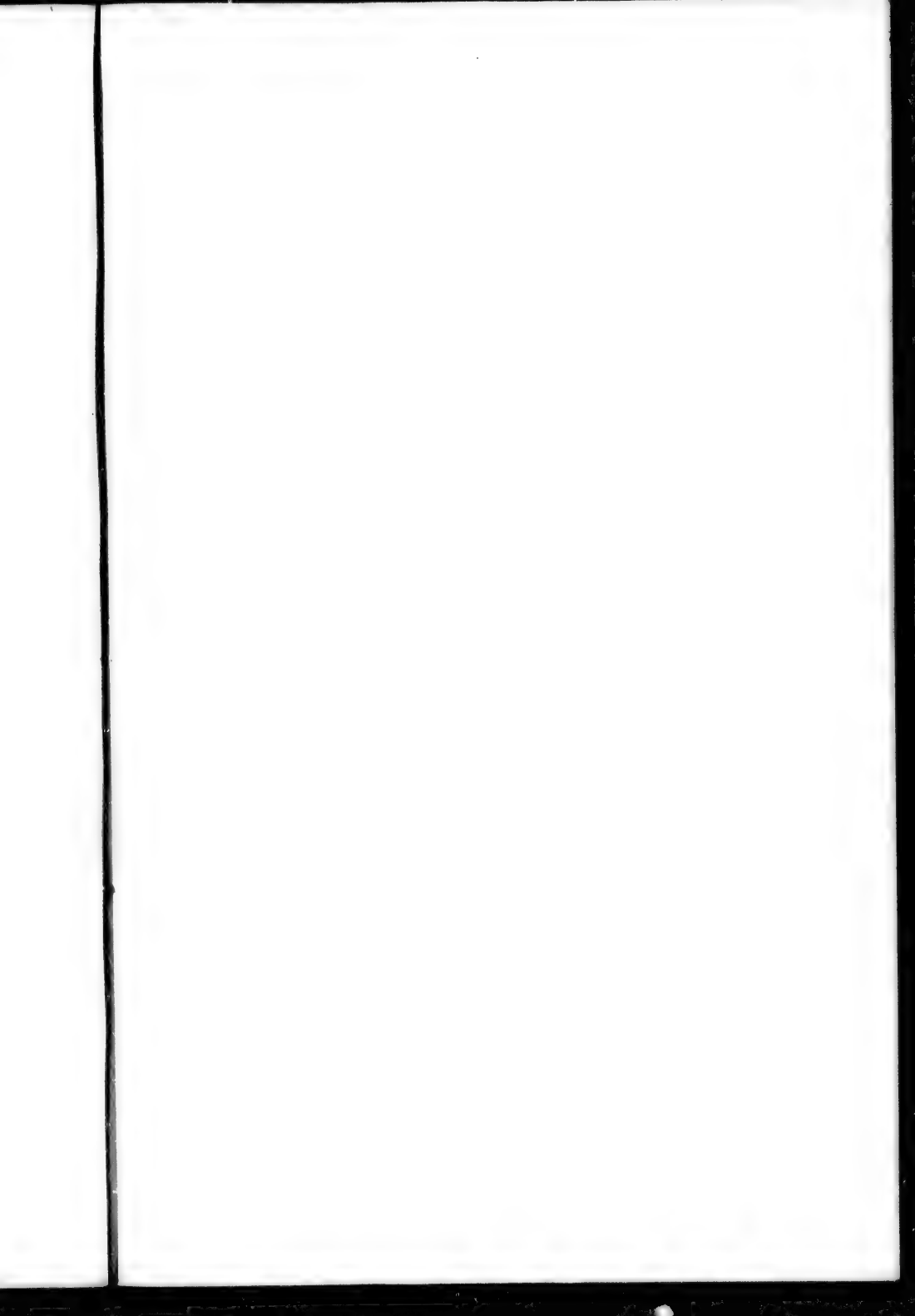
21. The evidence appealed to is that of Mr. Badington (vol. ii, pp. 593-594), who is, however, careful to add that these resorts are uninhabited by man. There are no seal rookeries along any coasts that are continuously hunted. It is the condition of isolation—imposed by Nature on the Pribyloff and Commander Islands until man penetrated the fogs and discovered them towards the end of last century, and continued artificially since man has taken control—which has, without doubt, led to these groups becoming the private resort of the fur-seal. On Robben Island, on several of the Kurile Islands, and on various places along the coast of Kamtelatka, seals still breed because they are not continuously hunted, as they have been all along the coasts of North America from time immemorial.

Domesticity

22. The plea, frequently advanced by the witnesses who speak on behalf of the Company which leases the islands, that the fur-seal is essentially a domesticated animal, is one that is not borne out by the facts of the case.

23. Domestic animals are those which have become habituated to the control of man throughout their lives. They live in continuous subjection to man, and depend on man for their daily food and for protection. According to the "Imperial Dictionary" (1882), to





domesticate is "to accustom animals to live near the habitations of man; to tame; to keep for the use of man." In every case they possess superior speed or strength, which, if utilized, would enable them to escape or withstand such control.

24. The fur-seal, on the other hand, endeavours, and for the greater part of the year with success, to flee the dominion of man. Man is unable to herd, provide with food or protect it from its many natural enemies. But the fur-seal while on shore cannot outrun human beings or seek freedom and safety by flight or fight. It is because the fur-seal is incapable on shore of speedy or prolonged locomotion or exertion that it can be and is brought temporarily under the control of man. But it is to be noted that it is absolutely uncontrolled and uncontrollable by man when it chooses to proceed to sea, as it invariably does for the greater part of the year.

25. The United States have advanced the further argument that the fur-seal is not properly classed under *feræ naturæ*, because it exhibits an *animus revertendi* on leaving the breeding-places. Equally cogent is the argument that the fur-seal, on leaving its winter home and feeding-grounds, also exhibits an *animus revertendi*, and, as a matter of fact, after a sojourn of three or four months on the islands, does, of its own uncontrollable will, leave these islands and return to its winter home 2,000 miles away. Page 89.

26. The fur-seal is of a gregarious habit, seeking safety in numbers, and resorting to places frequented by its fellows. On shore it is easily attacked by man. But even in the last stages of exhaustion after being "driven," it will always show flight, and to say that it can be as easily driven and handled as sheep or cattle is to gloss over the fact that the fur-seal can only be "handled" when it is incapable of locomotion through exhaustion and out of its element on shore.

27. In general, then, the fur-seal of the North Pacific is essentially a pelagic animal, with its fins instead of feet, and, as a matter of fact, spends the greater portion of its time in the open sea, many hundreds of miles distant from its favourite breeding resorts, and during that period needing access to areas of water and to fish over which all nations have rights of usufruct.

Two separate herds.

Without doubt the fur-seal comes under the category of *feræ naturæ*, and while it uses, for the present, United States' and Russian territory for breeding purposes in the North Pacific, it none the less requires access, for from six to nine or ten months of the year (according to sex and age), to the high seas for purposes of feeding and of securing a congenial winter home.

28. The division of the fur-seal of the North Pacific into two distinct herds which never intermingle (pp. 94-96) is a theory of very recent origin.

29. Both actual experience and matured opinion are against any such contention.

30. That the fur-seal does not necessarily resort year by year to the same breeding-grounds is an established fact.

Seals have been marked and proved to resort to other breeding grounds, even in the following year.

(i.) Mr. Elliott describes ("Census Report," p. 31) an experiment made by the Russians on St. Paul Island, fully confirming the above statement.

(ii.) In 1870 a similar experiment was made on St. Paul Island, with similar results.

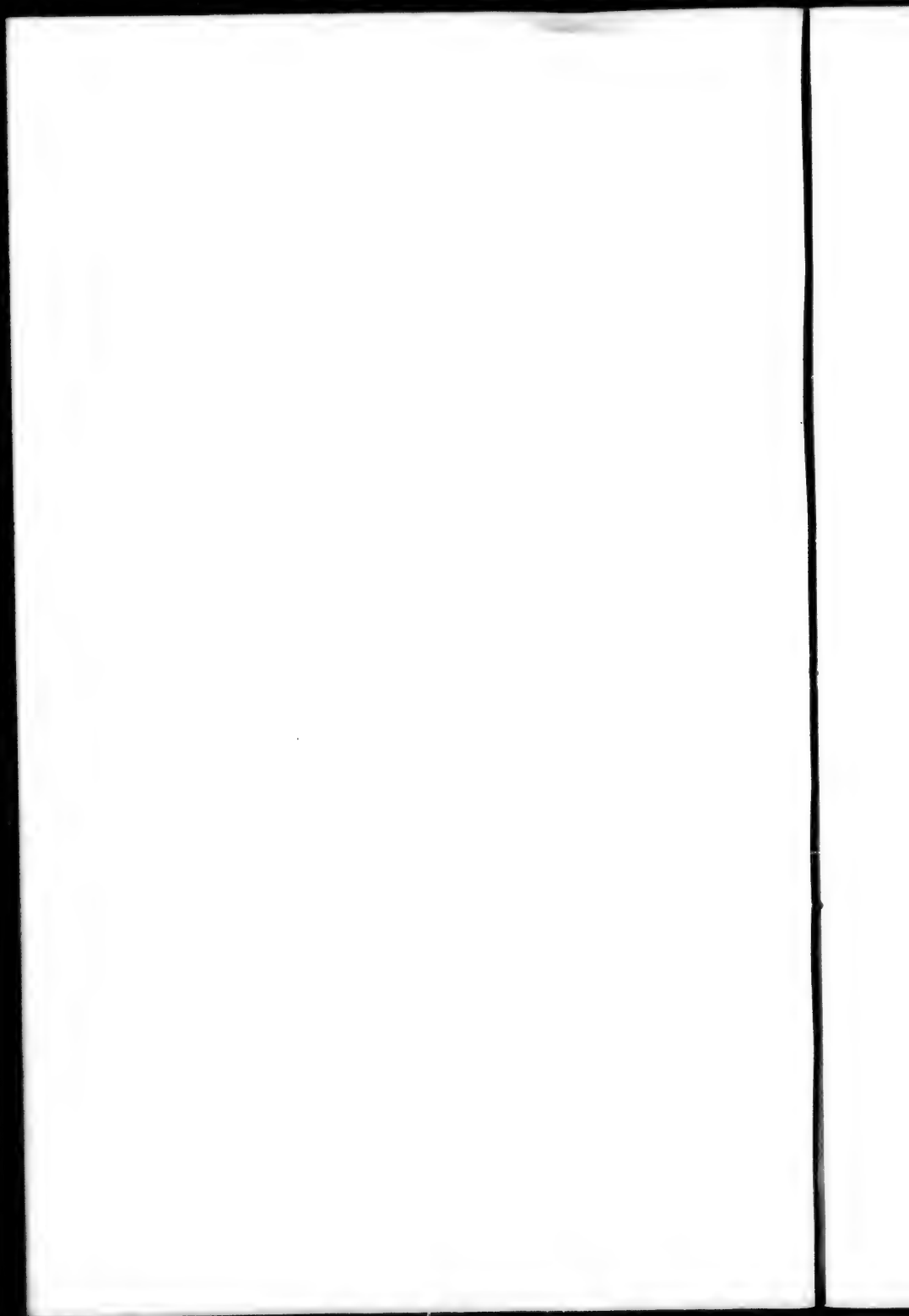
Respecting the 100 seals then marked, Elliott writes:—

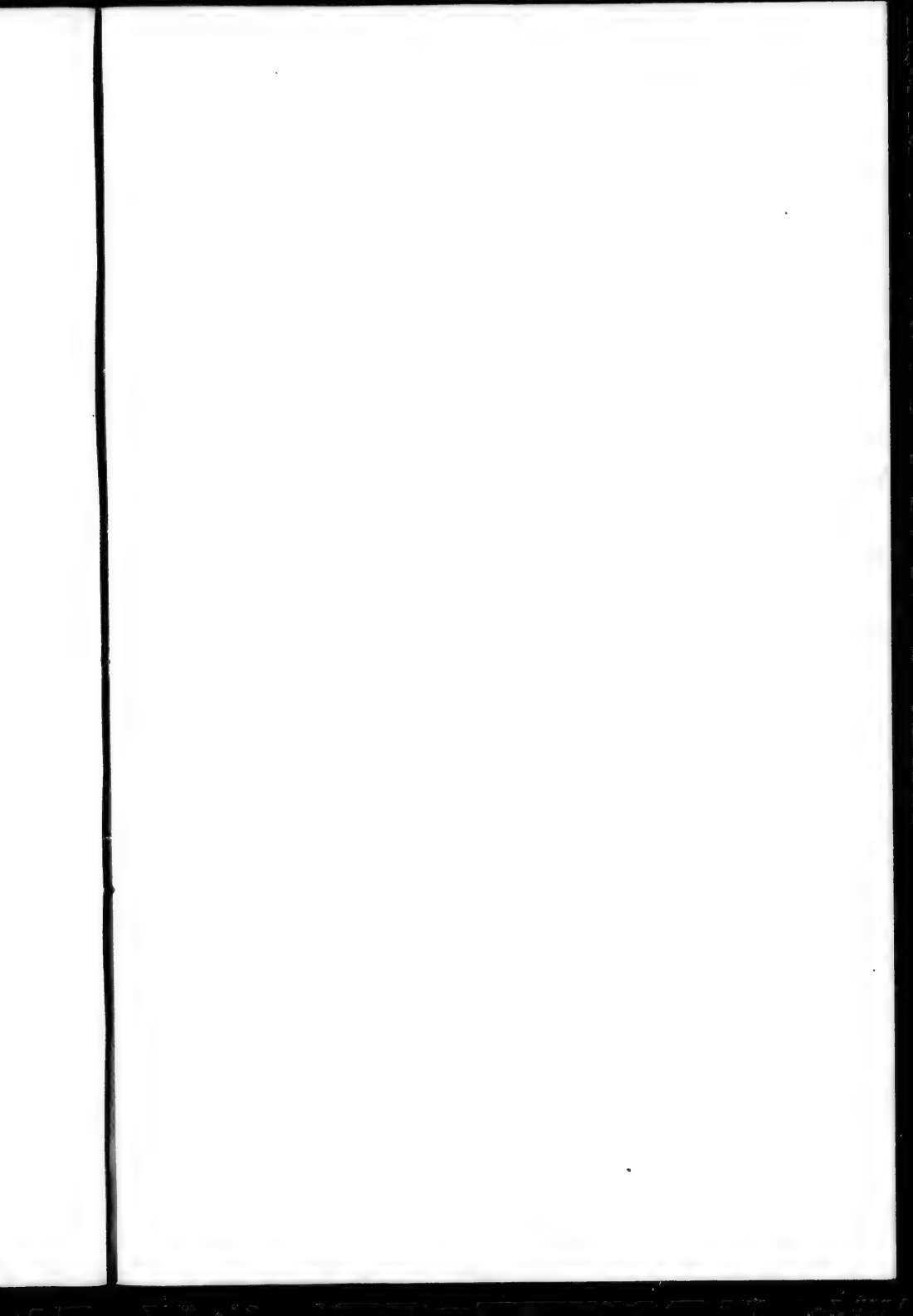
"Of this number, in the summer of 1872, when I was there, the natives found in their driving of 75,000 seals from the different hauling-grounds of St. Paul up to the village killing-grounds, two on Novastoshna rookery 10 miles north of Lukannon (the point at which the seals had been marked), and two or three from English Bay and Tolstoi rookeries, 6 miles west by water; one or two were taken on St. George Island, 36 miles to the south-east, and not one from Lukannon was found among those that were driven up from these."

(iii.) Captain Bryant gives corroborative information (Allen: "North American Pinnipeds," p. 464).

(iv.) Dr. H. H. McIntyre ("Congressional Report on Fur-seals of Alaska," p. 100).

"In 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 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disturbed in their favourite haunts for several successive years, they are quite sure to seek some distant and unknown place, where they can congregate unmolested by man."

(ii.) In a Report on an investigation on the Alaska Commercial Company by a Committee of Congress, dated 1876, Mr. J. F. Miller, President of the Company, in reply to a question as to whether the seals were not supposed at a former period to have been driven from the Pribyloff Islands to the Commander Islands, stated:—

"They no doubt were at one time. Some of them went over there, and where the others went we do not know, because they do increase upon the Russian islands; so history shows."

(iii.) Mr. C. A. Williams, one of the founders of the Alaska Commercial Company, in his evidence before the Committee of the House of Representatives in 1888, said:—

"It was supposed at that time (early in the Russian régime) that the commencement of seal life on the islands Behring and Copper probably took place by means of the indiscriminate killing on the Pribyloff Islands diverting the seals from their usual haunts, and making them seek some other localities. . . . There had hardly been any sealing or seal life to any extent on the Commander Island, or Copper and Behring. It had not attracted the attention of the Russians, but after the indiscriminate killing on the Islands of St. Paul and St. George it was noticed that seal life increased rapidly on the other islands, and the supposition is a natural one, that they were diverted from the islands on which they had before been undisturbed, and sought other places. . . . Indeed, it was predicted by Russian authorities, conversant with seal life, at the time of the cession of the territory, that the reckless and indiscriminate killing of seal by the Americans would soon drive the Pribyloff herd to the Russian islands, and thus they (the Russians) would regain and retain all that was most valuable in the ceded territory."

(iv.) Mr. Elliott, in his Report for 1872-73 (p. 69) writes:—

"Certainly, if the ground on either Behring or Copper Islands in the Commander group is as well suited for the wants of the breeding fur-seal as is that exhibited by the Pribyloff Islands, then I say confidently that we may at any time note a diminution here, and find a corresponding augmentation there; for I have clearly shown in my chapter on the habits of these animals, that they are not so particularly attached to the respective places of their birth, but that they rather land with an instinctive notion of the fitness of that ground as a whole."

Again, p. 265, he writes:—

"It is not unlikely that some season may occur when an immense number of the fur-seals which have lived during the last four or five years on the Pribyloff Islands should be deflected from their usual feeding range by the shifting of schools of fish, &c., so as to bring them round quite close to the Asiatic seal grounds in the spring, and the scent from the rookeries would act as a powerful

stimulant for them to land there, where conditions for their breeding may be as favourable as desired by them."

(v.) In the "Congressional Committee Report on Fur-Seal Fisheries of Alaska," dated 1889 (p. 16), Mr. Buynitzky gives the following evidence:—

"Q. What, in your judgment from your experience of that business in these islands, would be its effect by opening up the business, that is, removing the restriction so that everybody could go in there and kill fur-seals?—

A. The probable effect would be to drive the seals from these islands to the Russian group.

"Q. That is, driving them from the American islands over to the Russian islands?—A. That is the most probable effect. That was conceded at the time by all who studied the question.

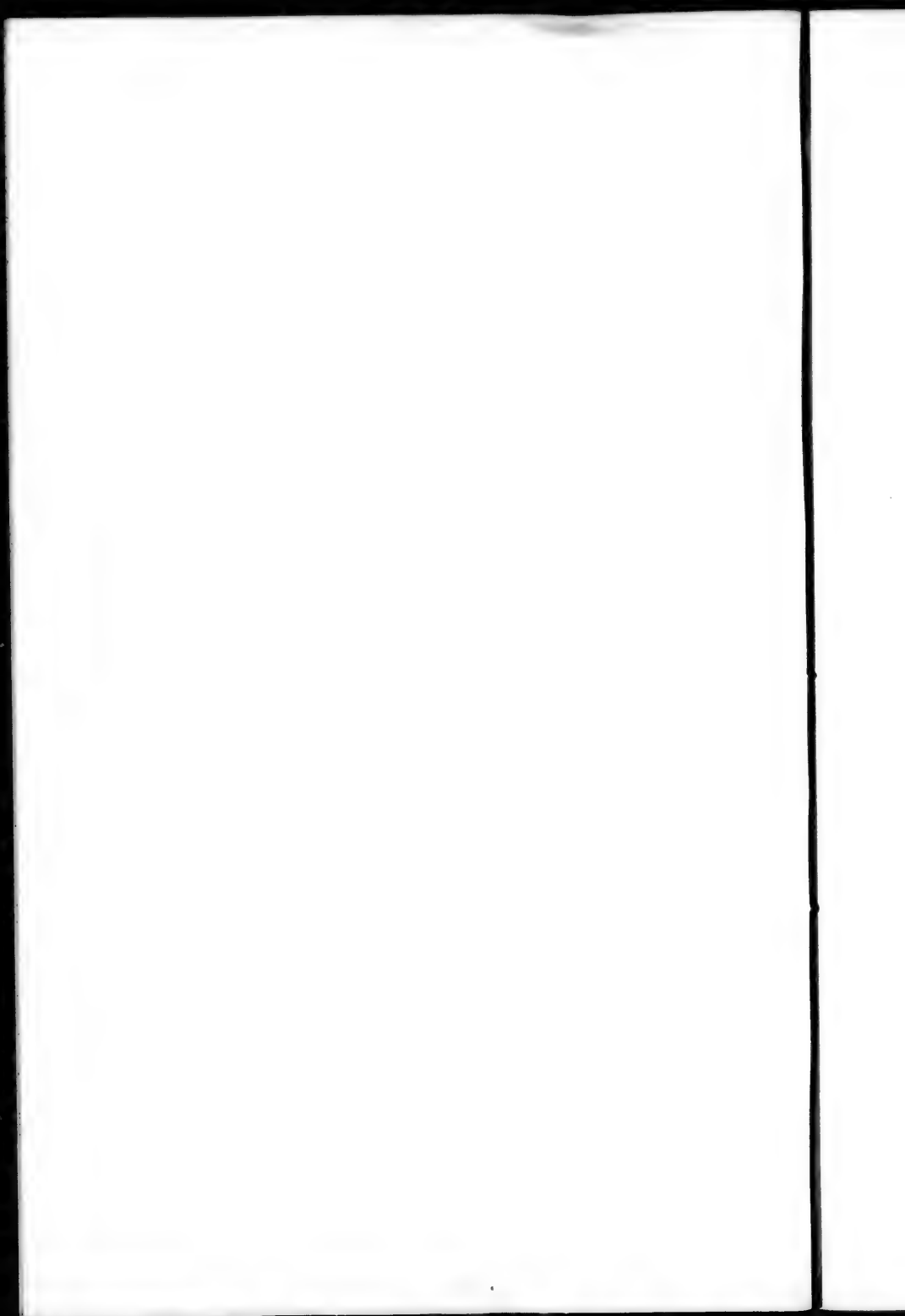
"Secretary Loutwell knew that very well."

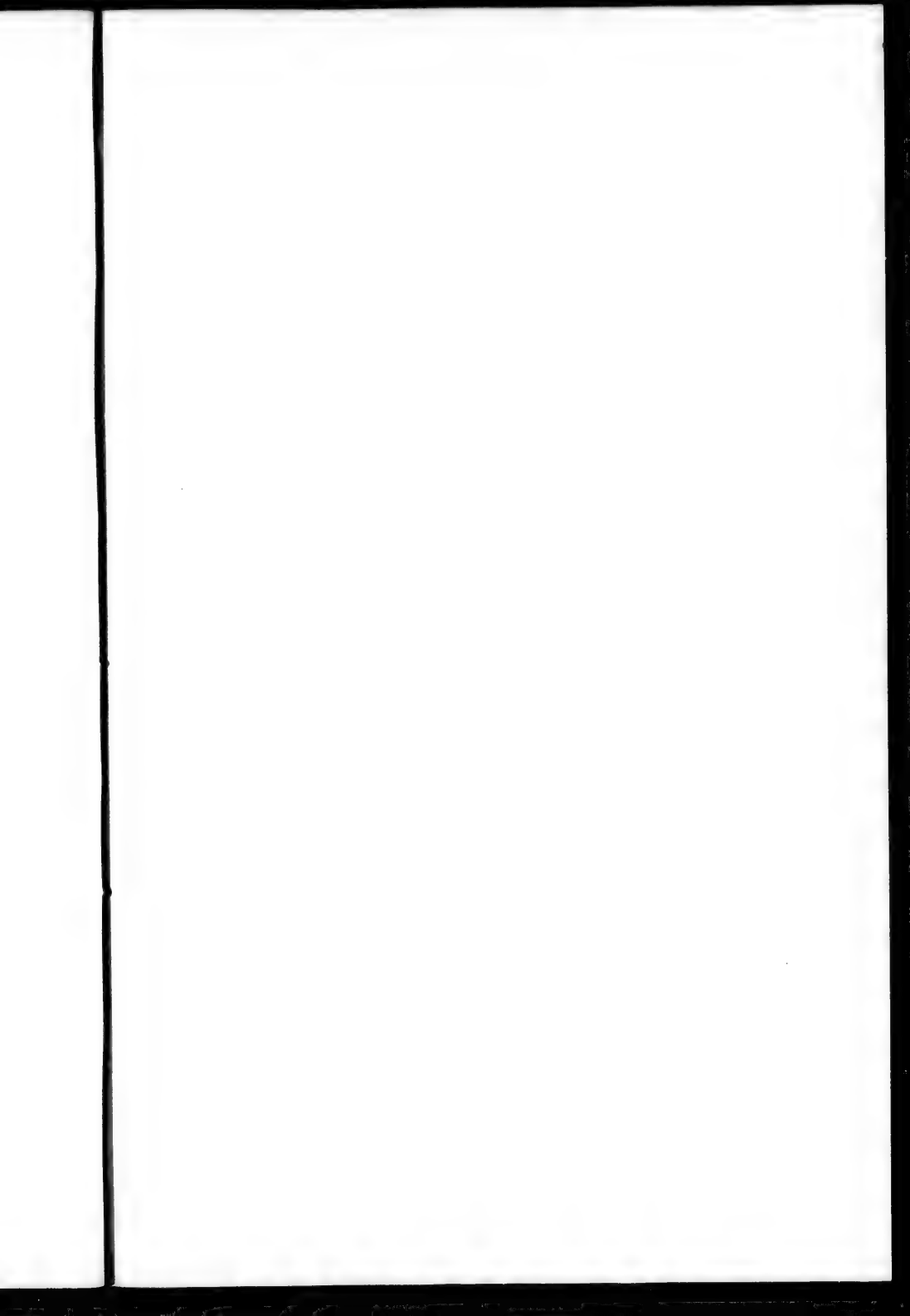
(vi.) M. Grebnitzky, the experienced Superintendent of the Commander Islands, states his opinion, in 1889, that the increased activity of the sealing schooners along the shores of those islands did much damage to the sealing industry on the islands principally by frightening and scaring the seals, so that they did not land, and that especially the breeding females endeavoured to escape disturbance by resorting to the neighbouring coast of Kamtschatka, where they congregated in large numbers, and endeavoured to establish landing places in peace and quiet.

30. These traditional opinions are emphasized by the undoubted fact that the fur-seal, say, 200 years ago, was much more widely distributed than now, and that he has become concentrated on particular breeding-places owing to continuous hunting in other previous resorts. Thus, when the Commander Islands were discovered in 1741 and the Pribyloff in 1785, the fur-seals were not found in any such quantities as in more recent years, and the islands were far more productive of sea-otters and sea-lions. The catch of seals on the Commander and Pribyloff Islands has risen from an annual average of a few thousand to an annual average of 50,000 and 100,000 respectively in 1890. This concentration on these particular breeding-places did not originate in, nor has it led to, differentiation of the fur-seal into distinct "herds." Historically they form one herd.

31. The seals from the different parts of the North Pacific are not distinguishable in science either for species or genus, and no evidence is advanced by the United States to this effect, or even to show a varietal difference.

32. As a matter of fact, it is impossible to identify a seal as having been born or bred upon any particular rookery or breeding-island, except





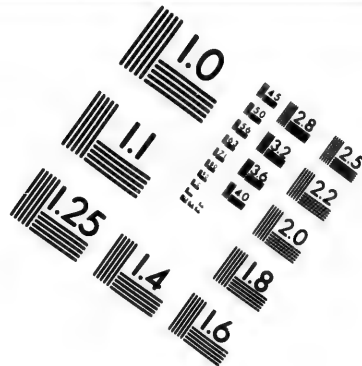
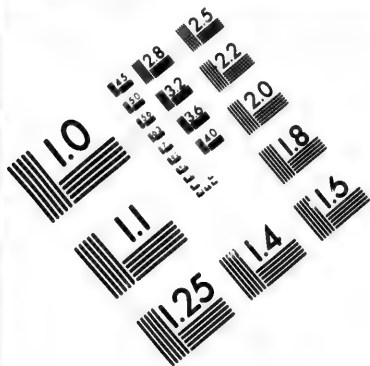
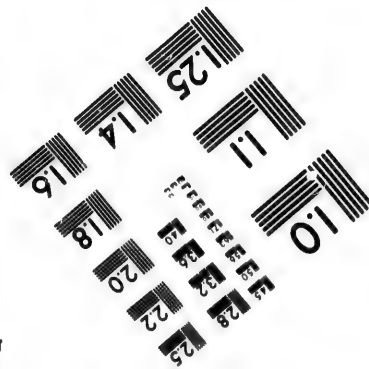
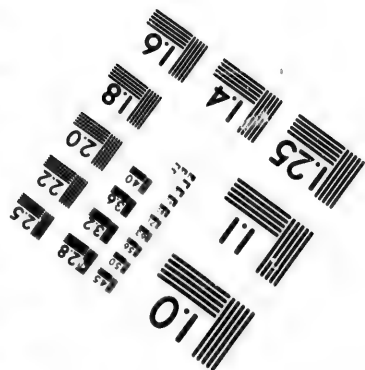
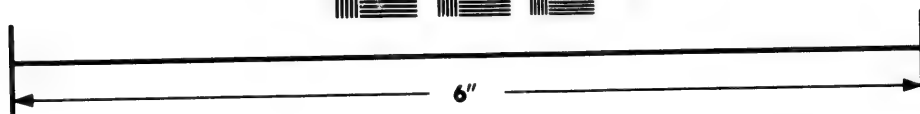
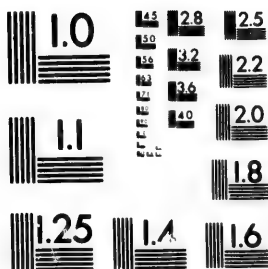


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by branding or marking with a tally. A seal born on the coast of British Columbia or in the Kurile Islands may take to frequenting the Pribyloff or Commander Islands, or a seal born on the Pribyloff Islands may spend the rest of its life on the Commander group.

A slight difference in the texture of the fur may result from living in the different localities, but is not primarily due to place of origin.

33. It is absolutely impossible to determine where a seal may have been begotten. The best authorities acknowledge that effective coition can and does take place in the water. It is certain, judging by the known period of gestation, that coition frequently takes place at dates when the males and the females must have come together in places far distant from the Pribyloff or Commander Islands.

34. Throughout volume ii, that of testimony on affidavit, the theory of the two herds is introduced with strange uniformity. It is remarkable, for instance, to find (vol. ii, p. 214) a native of the distant Island of Attu, on which he has lived all his life, stating—

"I do not know the routes the fur-seal herds take in their migrations to and from the Commander and Pribyloff Islands; neither do I think the two herds come near enough together in these latitudes to mix."

The British Commissioners are certain that no native on any of these islands ever knew the meaning of such words as latitude or migration.

This same native does, however, speak clearly as to the fact that—

"about twenty-five years ago I used to see small squads of large seals during the month of June feeding and sleeping about the kelp patches. . . . They came from the southward, and travelled in a north-westerly direction."

35. In all this evidence the reference to the "two herds" theory is mere matter of opinion. Indeed, until the year 1891 there were no actual observations or records available except in isolated cases. It seems certain, from the evidence since obtained, that while the fur-seal do in their migrations follow the coast-line at, perhaps, distances varying from 100 to 300 miles off the coast, yet that the fur-seal does habitually wander in the summer over the widest areas in Behring Sea, and that it forms itself into

independent bands of seals which remain, despite all changes of weather, and without resorting to the shore, in distant parts of Behring Sea.

36. The evidence gleaned in 1892 by many observers may be thus summarized:—

37. It is also to be remarked that although the seals at present frequenting any one breeding-place will for the most part habitually resort thither year by year, just as all migratory animals, fishes, and birds for the most part resort to the locality where they were born, yet this will not always be the case, more especially when continued disturbance or excessive slaughter scares away the seal from his accustomed haunts.

38. There is, for instance, much discrepancy between the statement (p. 120) that—

"of the bachelor seals the greater number appear (at the islands) towards the latter part of May,"

and the evidence given by the Makah Indians (and others), (vol. ii, p. 390)—

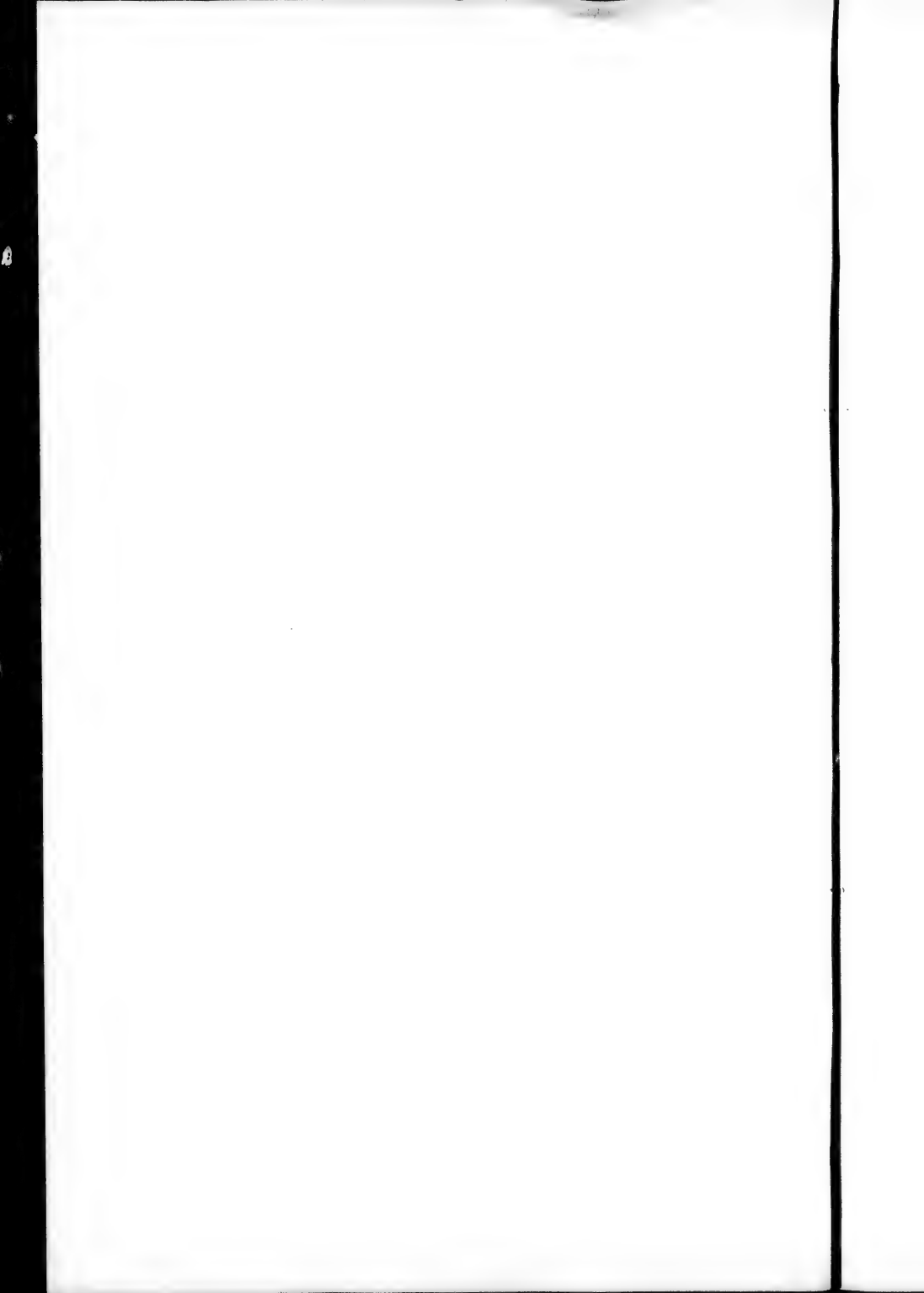
"about the middle of June, at which time the cows are pretty much all gone, but the smaller seals remain until about the middle of July;"

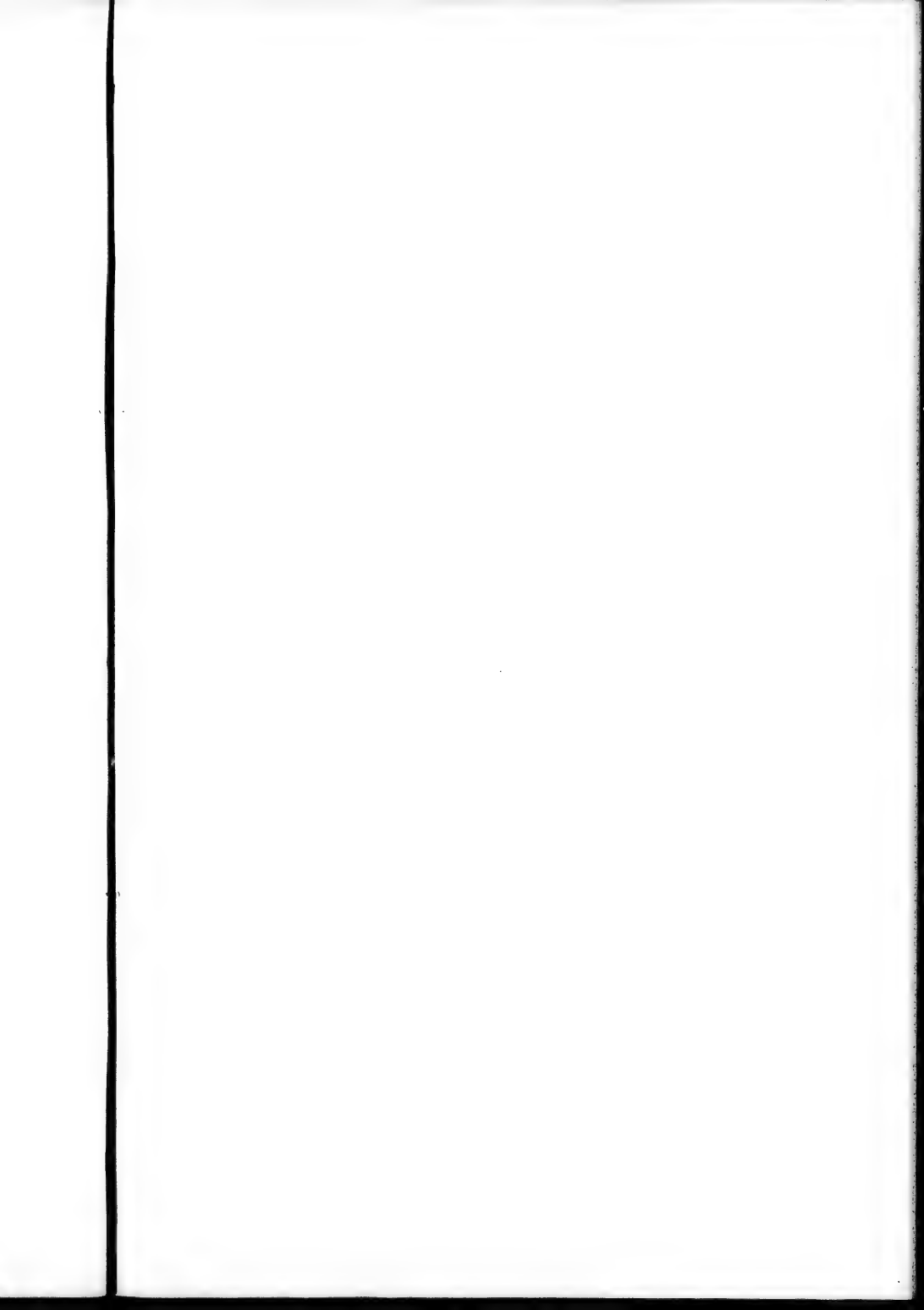
or again (vol. ii, p. 391)—

"The fur-seals appear off Cape Flattery about the last of December, and go and come until about the middle of June, but yearlings and 2-year-olds remain considerably later."

If the rigid line is to be drawn as to herds, certainly these seals which are found as far south as Cape Flattery, 2,000 miles from the Pribiloff Islands, so late as the middle of July, cannot possibly belong to the same "herd" which is all ashore on the Pribiloff Islands "in the latter part of May and beginning of June."

39. The main argument advanced by the United States in support of this two herds





theory is that in the commercial classification of the skins the distinction is habitually drawn; and that experts, even in the London factories, "can easily distinguish an Alaskan from a Copper skin."

40. On p. 95 of the Case two of these supposed authorities are quoted, and it will be observed that while one avers that the Copper may be distinguished from the Alaska skins because the hair "*has a yellow tinge*," another authority, only a few lines below, describes "*the difference in the fur as being a little darker in the Commander skins*."

Turning to vol. ii, we find it stated on affidavit by Mr. Bevington, of the firm of Bevington and Morris (p. 552), "the Copper skins are lighter in colour than either of the other two;" and by Mr. Martin, of the firm of C. W. Martin and Co. (p. 569), "in the Copper Island skins the hair has a yellow tinge than have the hairs of the Alaskan seal;" which Mr. Teichmann, the well-known London furrier, states (p. 580): "The Alaska and Copper skins are distinguishable from each other partly by means of the different colour. The Copper skins generally have a darker top hair."

41. Throughout the testimony put forward by the United States there is not one word to indicate that in classifying the skins for sale any line of demarcation is drawn according to place of origin. The experts uniformly speak of classifying the skins by appearances, as colour, length of hair, texture of fur, shape of skin, and even spear and shot holes.

It may be pointed out, however, that not only are there the above contradictions as to colour, but that the narrower "neck" and the wearing away of fur on the under side are taken by different experts as distinguishing signs respectively of male and female, and of Alaska and Copper skins.

42. The seal-skins marketed in London are shipped direct from the Pribyloff Islands, the Commander Islands, and Victoria. They are, on arrival, sorted and catalogued for sale under the general headings of "Alaska," "Copper," and "North-west," or "Coast," catch.

But the main principle adopted in the sorting is classification by kind and appearance of skins. [Further information to be obtained ? through Treasury.]

43. How far this classification is reliable as

indicating any difference between "two herds" is seen when we remember that the skins landed in Victoria are obtained at sea off the coasts both of America and Asia, an increasingly large proportion coming from the Asiatic side. There is also a considerable percentage, certainly amounting to several thousand each year, of skins of seals taken by clubbing on shore, and by shooting and spearing in the waters close to the rookeries, at both the Pribyloff and Commander Islands. These skins coming through Victoria would, of course, be quite wrongly classed as North-west catch.

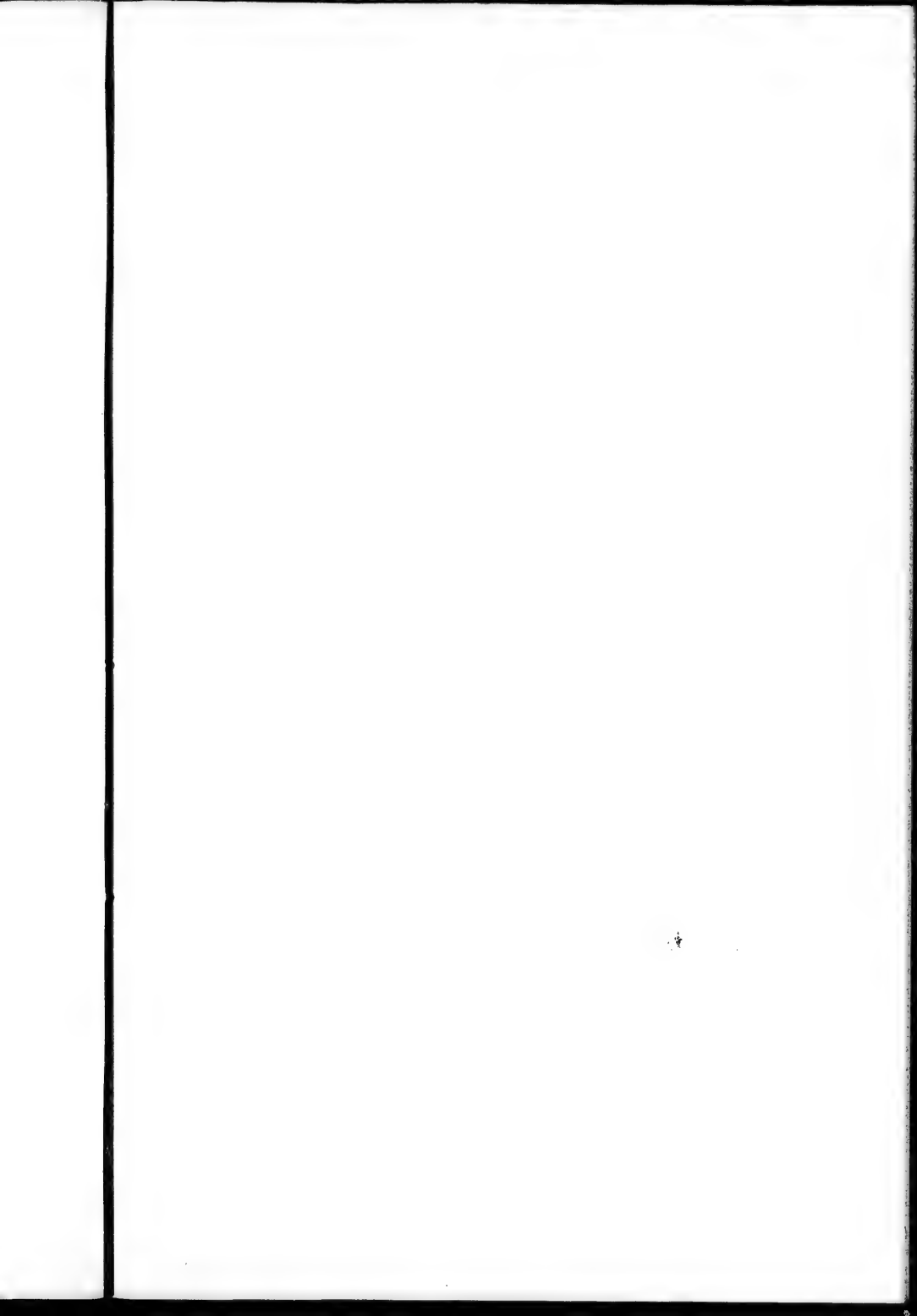
44. It is also well to remember that both in the skinning and the salting the methods necessarily employed on the schooners are very inferior to those possible on the islands, and that for this reason alone the North-west catch may supply inferior skins, no matter from what locality they may be taken.

45. Thus it is evident that the theory of "two herds" has no foundation in scientific, historical, or commercial experience, and that the seal herd of the North Pacific resort to particular breeding-places in various parts of the Pacific for lengthy periods, and from these they are not to be driven except by excessive slaughter or perpetual disturbance.

46. The statements in regard to *pups* (pp. 98-105) are generally in accordance with those summarized on p. 53 of the Report of the British Commissioners.

The important question of the period during which a pup is dependent on its mother for food is not specifically dealt with in the United States' Case. On p. 105 it is pointed out, with truth, that when "from four to six weeks old" the pups gather together into groups called "pods," apart from the mothers, and by degrees work their way down to the water's edge, where they soon learn to swim.

47. But other facts are not alluded to. It is, for instance, well ascertained that all seals are capable of, and accustomed to, prolonged abstinence from food. According to the testimony of expert Atlantic sealers the pups of the hair-seal are weaned after the twelfth day, but remain on the ice, subsisting on their own fat and on the last supply of milk until they become thin, and even emaciated, when they take to the water to seek their own food. With the fur-seal,



records show that many of the pups can swim well even before August, and by the beginning of September they are met with even 60 to 70 miles at sea. It is, therefore, probable that the fur-seal pup, after eight weeks, is no longer in need of the cow's care or milk. Thus the pups on the Pribyloff Islands come to be independent of their mothers, according to date of birth, from the end of July to the latter part of August. This does not mean that they will not, if the opportunity occur, continue to take milk, as is the observed custom with the young of all the mammalia.

48. In regard to *bulls* (pp. 107- *et seq.*), with the general facts stated all will agree; but there are very serious discrepancies in the statements as to the number of cows a bull can effectually serve. It will be observed that the six statements quoted on pp. 109, 110 are opinions as to how many cows a bull *could* effectually serve. Dr. Merriam, the United States' Commissioner, in his Circular letter to foreign naturalists (vol. i, p. 415) states that "each male serves fifteen to twenty-five females." The British Commissioners, in their Report (p. 52), give the opinions of the experts on the islands that the proportion in the early years of the United States' lease of the islands did not exceed twenty females to one bull, and that that should be the maximum limit.

Bulls.
—

The facts of the case are to be seen in the unanimous agreement of all statements and records in the earlier days of the rookeries that the average limit would be fifteen, or at most twenty, cows to every bull. Whereas actual observation and record on the rookeries in 1891 showed frequently forty, fifty, sixty, and even eighty, cows to one bull, a disproportion which may well be regarded as at once effect and cause of dwindling numbers of seals on the islands.

49. The remarks of various observers (p. 110) that copulation in the water is impossible has to be set against the assertion by equally reliable observers that it is possible and even frequent.

Bryant and W. H. Dall are opposed on this point to McKintyre and Stanley Brown. But the matter is dealt with at length in the British Commissioners' Report (pp. 52, 53).

50. There is also to be borne in mind the analogous case of the hair-seal, in which case, according to the experienced testimony of Captain D. Gray and other sea'ers, coition

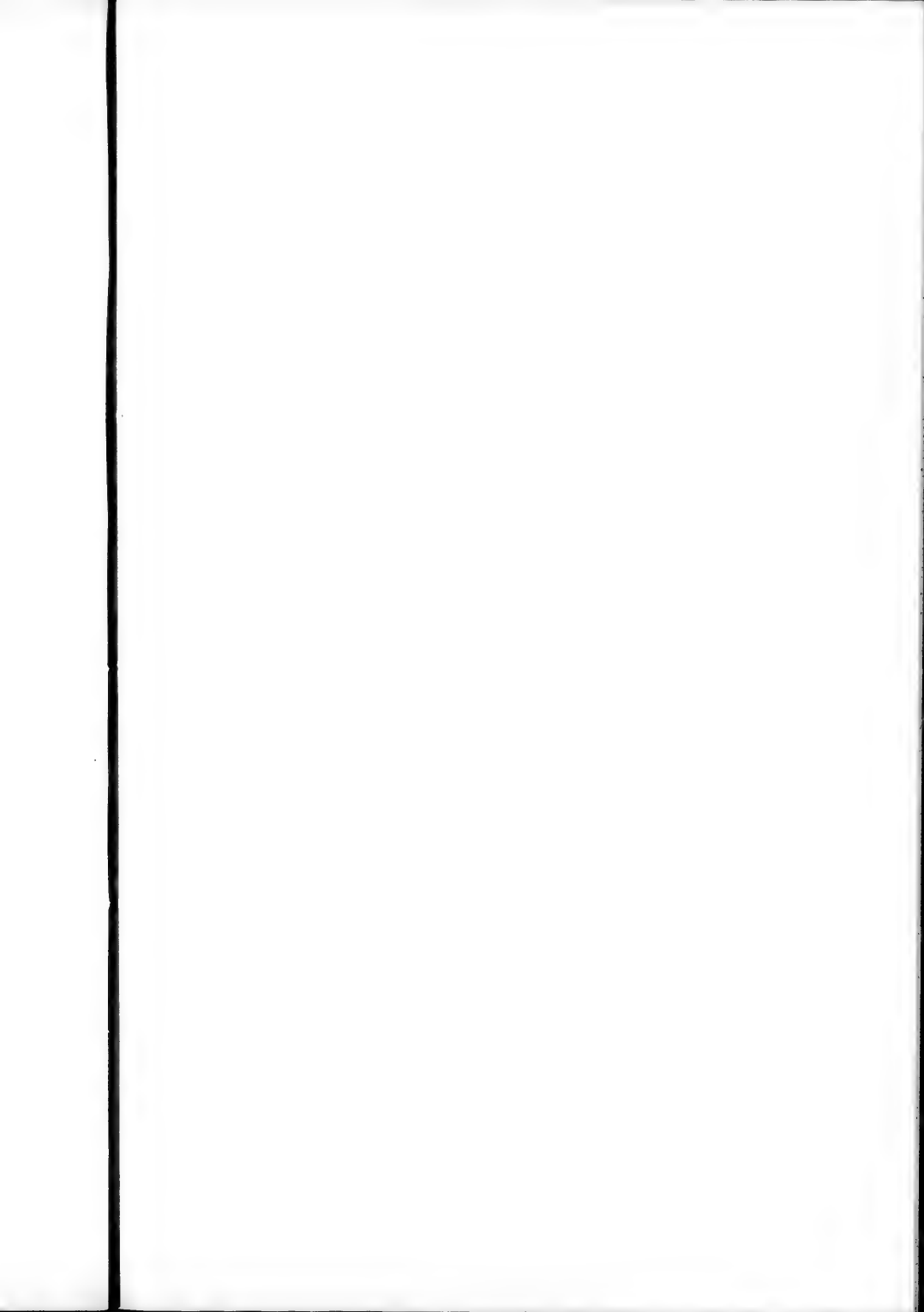
invariably takes place in the water, and not on land or ice.

51. In regard to the undoubted fact that the bulls fast the whole time they are ashore, it is also certain, and is specially mentioned in the United States' evidence, that the younger seals do the same, and no evidence is produced to show that the females while resorting to the island do not follow the example of all other classes of seals. The British Commissioners give as the result of their observations that the females and males as well, when they first leave the rookery grounds, do so rather to play and bathe in the sea than to feed. And they adduce the important fact that at no period in the rookeries is any excrement whatever to be found.

52. In the case of the hair-seal, experienced sealers point out that there is no excrement whatever on the ice resorted to by hood-seal and floe-rats, both of which classes abstain altogether from feeding whilst on the ice; but that the ice to which the harp-seal resorts is covered with dung, and the harp-seal are known to feed throughout the season.

53. The facts (pp. *et seq.*) as to the general life of the *cows* are agreed; and, in common with many other animals, it is probable that the cow will not willingly suckle any pup except her own. But, considering the heavy work done by the bull while ashore and without food, there is no apparent necessity, as stated on p. 115, for the cow to seek food while nursing her young. It is certainly not necessary for or done by the hair-seal in the Atlantic. And it is to be presumed that as all other classes of fur-seal abstain from food the female is not likely to form the one exception.

54. The close observations on the spot conducted by the British Commissioners (Report, p. 54) bear out the testimony of the native and other experts on the islands that the females do not leave the jealously-guarded harem to which they may belong till they have been ashore for at least four to six weeks—and during this time they abstain from food, but certainly nurse their young. Close observation also shows that when the cows first leave the harem and enter the sea they play around the shores in large numbers and do not leave the immediate neighbourhood of the rookeries. Bryant ("Mono-



graph of North American Pinnipeds," p. 386) describes the females as "floating or playing in the water near the shore, returning occasionally to suckle her pup."

55. That these cows do not seek food is proved by the fact (as set out in detail in the British Commissioners' Report, p.) that many kinds of fish are quite common in the waters close to the rookeries. The evidence of actual catches of cod on the British and United States' vessels and by the natives in boats is conclusive on this point, and completely at variance with the statement in the United States' Case (p. 116) that "*on account of the number of seals on the islands fish are very scarce in the neighbouring waters.*"

56. The best observations show that the cows do not leave the rookeries for six weeks, and the adjacent waters until after another three to six weeks, after bearing their pups. Thus the nursing cows earliest to arrive would not be leaving the islands before August, while the later arrivals—and in 1891 cows were observed landing and bearing pups in the last week in July—could not be going to sea until the end of September. The British Commissioners found no traces of food in the stomachs of two female seals killed on the Cape Yushin rookery, Behring Island, on the 5th September, 1892.

57. It is certain, however, that other classes of seals leave the islands earlier and go great distances to sea without returning to the islands. It is probable that among these are cows whose pups have been killed and also nursing cows who have been scared by being driven, or by stampedes on the rookeries. Later in the season cows in milk would be met with whose pups are practically weaned.

58. On p. 116 there is obvious confusion of argument as to the distances at which seals are found playing and feeding at sea, and the distances to which nursing cows will go to seek for food. The evidence of the experts on the islands (British Commissioners' Report, p. 56) generally limits to a few miles the excursions of the cows actually engaged in nursing. And one of the most notable facts brought out in the 1891 inquiry was that while seals are frequent within 1 or 2 miles of the breeding-places they are not met with again in any abundance until the islands are from 70 to 100 and even 200 miles distant.

59. It is also to be noticed that in the United States' evidence cows in milk are reported as being taken off the coast of British Columbia, and also in the Aleutian Passes. In neither of these classes of case would the cows be supposed to be returning to the Pribyloff Islands.

60. The evidence obtained from the sealing schooners themselves indicates [?]

[See Macoun, new evidence.]

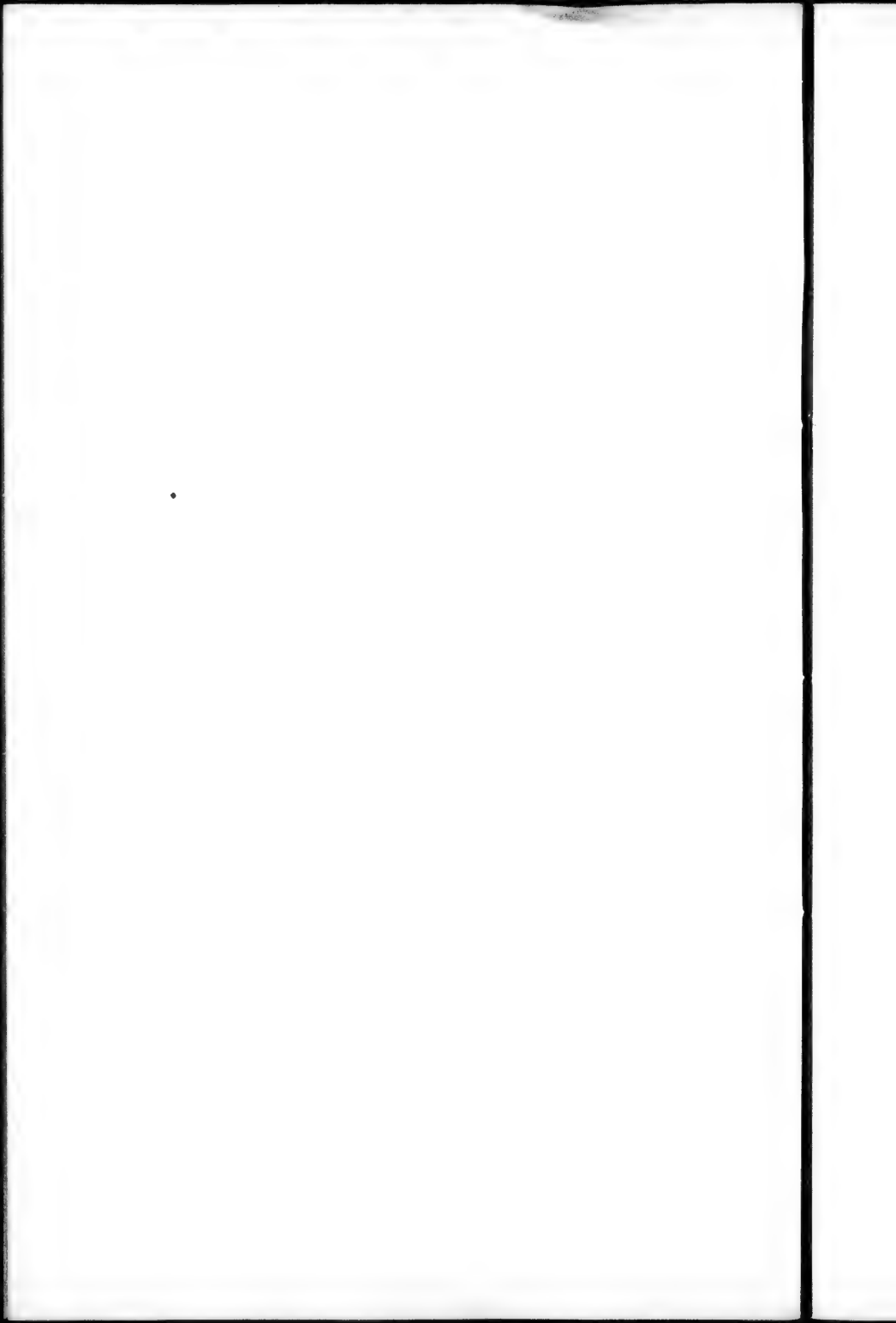
Bachelors.

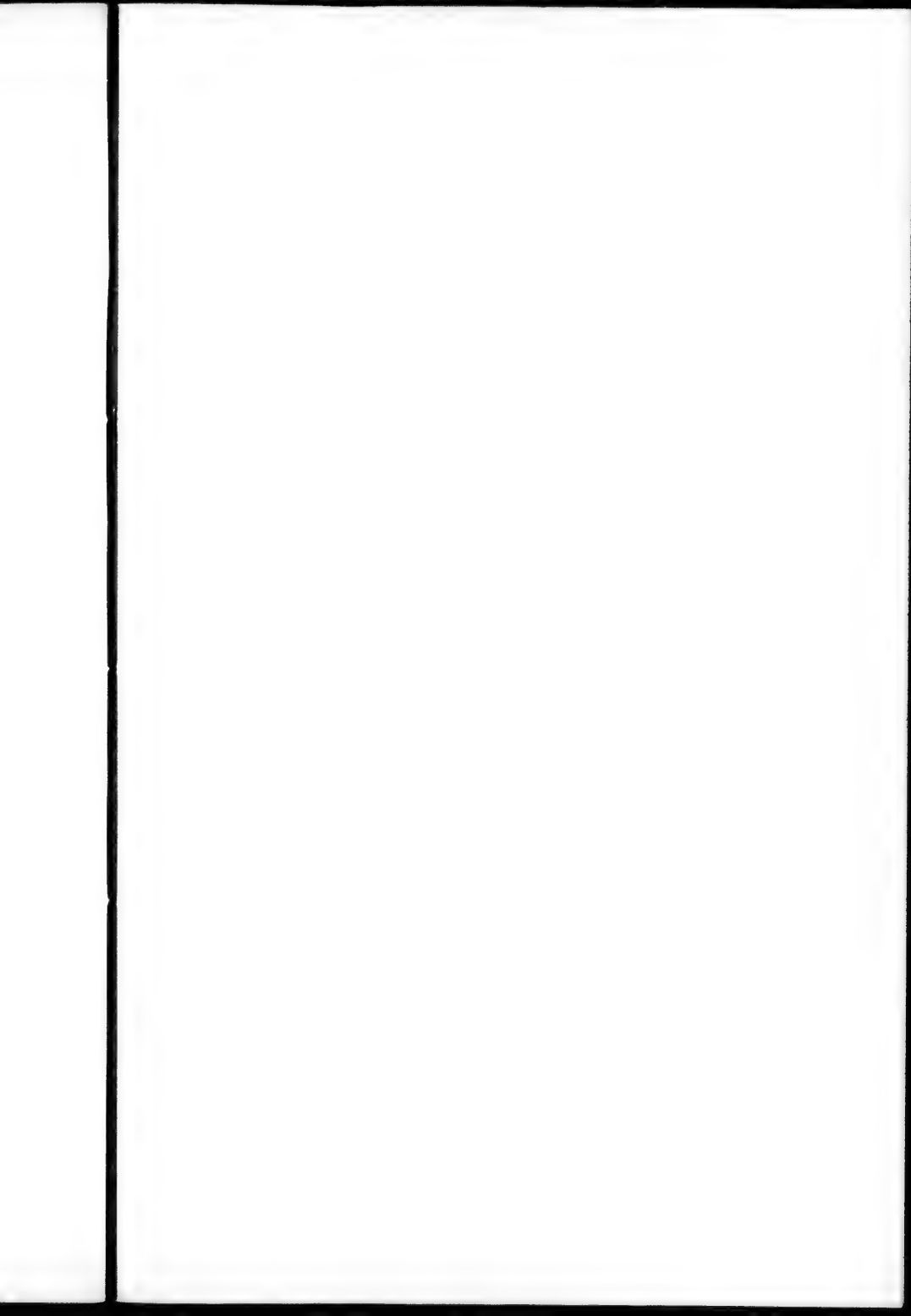
61. In regard to the *bachelors* (p. 120), the statements in the United States' Case do not agree with the evidence. It is inaccurate to say that the bachelors as a body haunt the neighbourhood of the breeding-grounds. As a matter of fact they herd apart, and as the season advances, instead of "*coming down into the breeding-grounds*," they wander further inland.

62. It is equally inaccurate to say that the elder *bachelors* never serve the cows. According to native and other testimony, the 5- and 6-year-old bachelors hang round the outskirts of the rookeries and their sea-fronts, and have frequently been seen in the act of serving a cow. This habit has probably developed in later years, when comparative scarcity of breeding bulls has so largely increased the number of females each old bull would appropriate to himself.

Migration.

63. In dealing with *migration* (p. 122), the United States' authorities make the uncontrovertible statement that "*the Alaskan seal-herd is migratory from necessity*." But the further statement that the seals remain on or near the Pribyloff Islands during unusually warm winters is absolutely without foundation, if by "seals" it is intended to convey more than a few stragglers, for no evidence whatever is to be found for any such statement. It is not even true to say (p. 123), "*in fact, seals have been killed there in every month of the year*." For this statement the reference is to a Table of killing on St. Paul Island, vol. ii, p. 114. But neither in that Table, nor in any other, is any evidence of the kind afforded. It is true that, in occasional winters of exceptional mildness, a few stragglers have remained through December, and even until January, but such a habit prevails with all migratory animals, and stragglers from the main body are to be noted at all stages of the migration. It is universally acknowledged by all experienced authorities that the great bulk of





the seals have left the islands by the beginning, or at latest the middle, of November.

64. The problem stated on p. 123, as to whether the seals could make the islands their one home or not under other conditions of latitude, is scarcely to the point, seeing that it is universally recognized as a matter of fact that the seals are forced by Nature to be away, and many hundreds of miles away, from the islands for the greater part of the year, seeking appropriate and necessary food and climate in waters over which all nations have common rights of *usus* and *fructus*.

65. It may be noted that p. 124 contradicts p. 123, unless it is intended to assert that the "seal herd" met with in the autumn, winter, and spring off the coasts of California and British Columbia is quite distinct from the "seal herd" frequenting the Pribyloff Islands "*nearly all the year*."

66. It is in a sense true that, saving in exceptional cases, the fur-seal does not land or breed on the American coast. But that he did so in the past is certain, and that he has been driven off by the perpetual hunting by man to which he has been subjected. The problem of re-establishing rookeries by means of protected areas on these coasts is, however, under consideration. Most of the Indians along the coast do, however, report having seen seals occasionally on shore; and all local evidence tells of seals in numbers visiting the bays and mouths of harbours, especially in January, February, and March, at many points along that coast.

[See British Commissioners' Report for details (pp. 30 and 30 A)].

(b.) *Management of the Rookeries* (pp. 129-164).

67. In regard to the administration of the Seal Islands, we are met on the very threshold by the statement (p. 131) that—

"Under the general protective system adopted by Russia . . . the seal herd continued to increase until the Managers of the Russian Company considered it possible and expedient to take 75,000 skins from St. Paul Island without danger of depleting the population."

This is intended to lead up to the excessive limit of 100,000 authorized by the United States' Government a few years later. But it is a statement distinctly at variance with fact.

68. Under Russian management the average number of skins taken annually, and inclusive of pups, was as follows :—

				Average Number of Skins.
1817-26	..	..	..	40,500
1827-36	..	..	..	16,000
1837-46	..	..	..	9,700
1847-56	..	..	..	15,000
1857-66	..	..	..	30,000

In 1867, the last year of the Russian occupation, it is true that 75,000 skins were obtained, but in no year since 1820 had more seals been taken than 40,000.

69. In the two letters referred to on p. 131, as proof of this strange statement, there is no reference whatever to any such numbers. The letter dated 1857 (vol. i, p. 84) speaks of an annual supply not exceeding 25,000. The letter of 1859 (vol. i, p. 86) states that the seals had so increased that—

"it would be quite possible to take from all the rookeries a total of 70,000 skins in one season; . . . it may be positively stated that the taking of 70,000 skins each year for a long period to come will not result in the impoverishment of the rookeries."

But these rookeries were those on both the Pribyloff and Commander Islands.

70. Professor Dall, writing in 1868 ("Alaska and its Resources," p. 496), states that of late years the Russians had not been allowed to take more than 50,000 annually. Allen ("North American Pinnepedia," p. 389) states that for many years the Russians took but few seals, and the number had so increased that in one year they had been enabled to take 40,000.

71. The statement on p. 131 that "the taking of grey pups was practically stopped" towards the close of the Russian occupation is true. But the further fact is not mentioned that under American occupation 4,000 to 5,000 pups were allowed to be taken annually, in addition to the quota of 100,000 adult seals for twenty years until 1890.

72. In regard to "American management," that is, after 1867, there is on p. 133 the statement that "*about 250,000 bachelor skins were taken that year from the Pribyloff Islands.*" Nothing is said of the 40,000 female skins that were taken the same year, or of the 40,000 additional skins taken on St. George, nor that in the following year

87,000 skins were obtained. There was certainly little or no order or care taken by the private competitors in their greed to secure all skins they could before any restrictions were enacted.

73. On p. 136 it is shown that the United States' Government very properly took ample powers to control the seal fisheries, but what is not shown is that these powers were never exercised. Parliamentary inquiries were indeed necessary in 1876, and again in 1888, but in each case the conclusion arrived at was that the Company was doing its duty, and that the condition of the natives had vastly improved. It is not pointed out, however, that these natives (numbering only about 300) were in reality imported labourers, who have been greatly aided and advanced by the lucrative nature of their occupation, but are not, like the thousands of natives of the coast of British Columbia and Alaska, autochthonous, and for generations, indeed from time immemorial, habitually engaged in taking fur-seal.

74. Nor is any notice given to the fact that the limit of 100,000 seals, although established as avowedly experimental in the first instance, has never been lowered or altered throughout the period of the lease, in spite of Reports and evidence (to be described in detail when we come to deal with the decrease of the seals), all indicating that this entirely unprecedented drain upon seal life was far more than the supply of seals could stand. Without this explanation the statement (on p. 153) that the limit of 100,000 "is variable, and entirely within the control of the Treasury," would be gravely misleading.

75. In regard to the management of the seal herd (pp. 147-165), the United States' Case has been prepared obviously in ignorance of many essential details and facts of seal life.

76. In the first place, much care is taken to show that the seals are as capable of domestication as a herd of cattle.

But, as has been already shown in another passage, no notice is taken of the fact that man has no control whatever over these seals whenever they choose to leave the islands, whether temporarily in the summer or permanently in the autumn.

77. Moreover, the only basis for this assertion of domesticity is that the seals can be driven up in flocks to the killing-grounds. As a matter of fact, this is simply because while ashore the seal

Seals.

Domesticity.

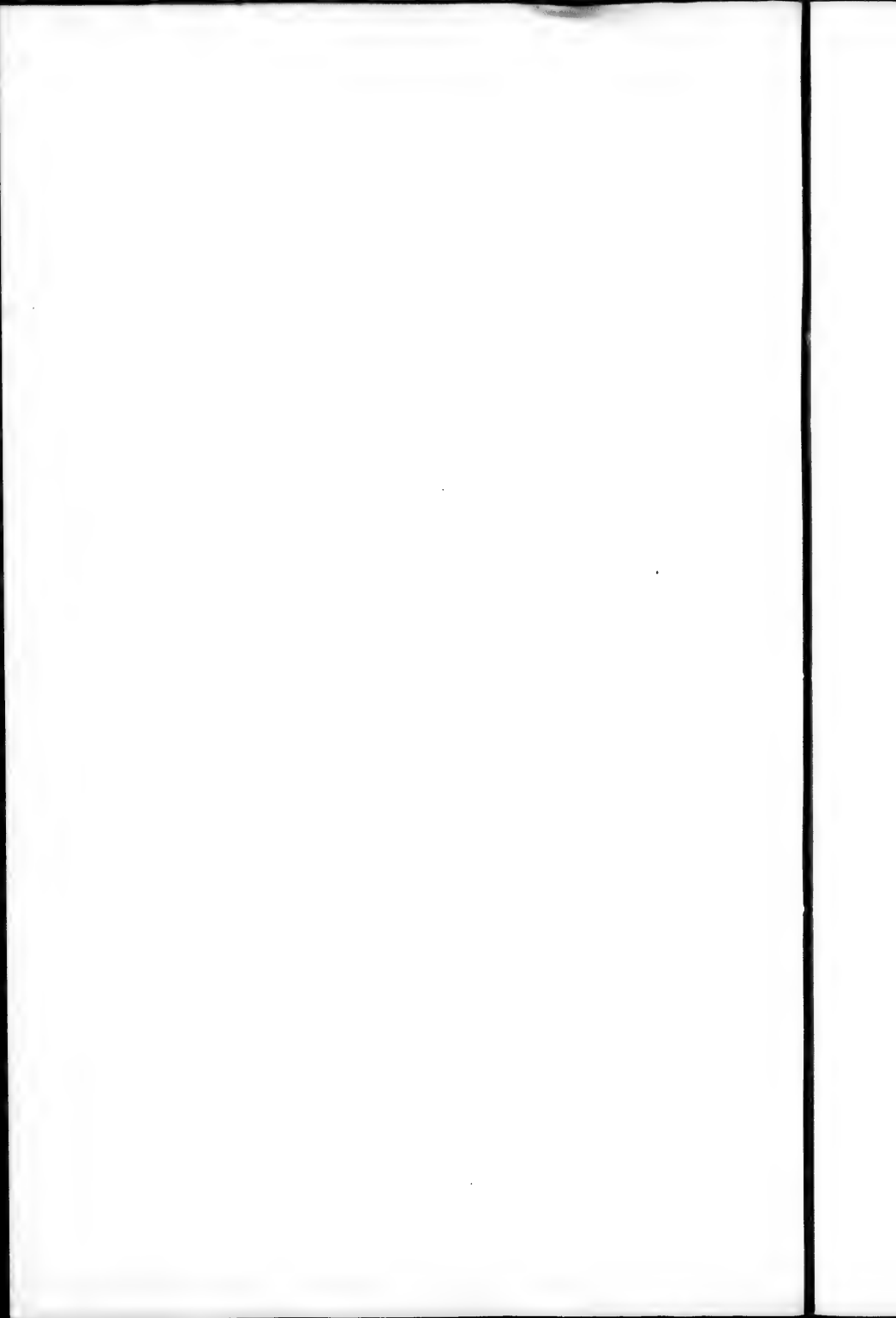
is incapable of escaping from man by flight. Cattle, sheep, poultry, horses, and all other *domestic* animals can escape by superior speed, but their nature is altered by domesticity and they allow themselves to be controlled by man. The seal, however, always remain savage, and will escape if by any means they can, and invariably show fight until too exhausted by the over-exertion inevitable to "driving." Their savage nature leads them always to resent rather than avoid human interference; but the whole herd is absolutely out of control when in due season it chooses to depart on its migrations, nor can the proprietors of the islands in any way or degree provide food for the seals or retain them on the islands.

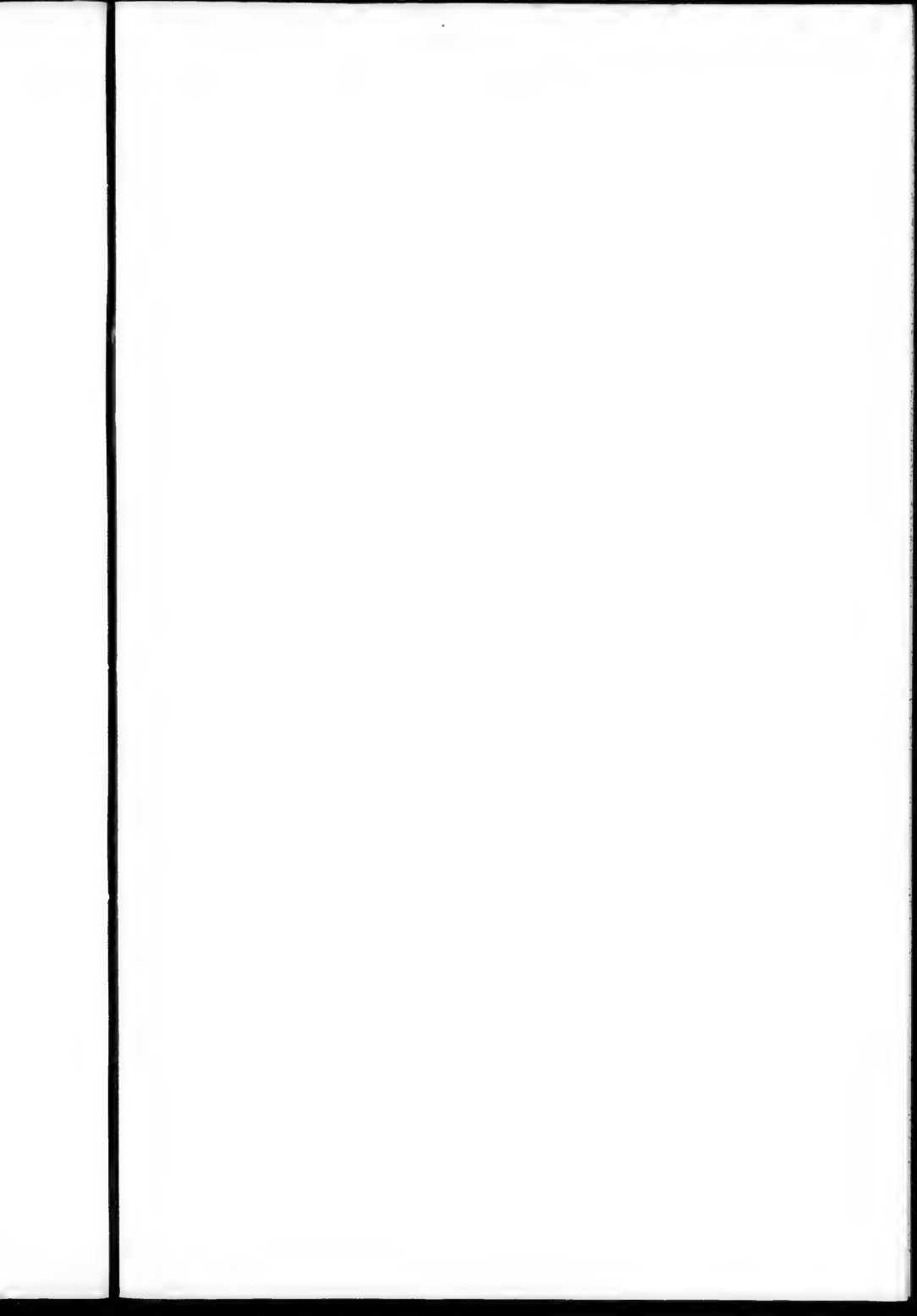
78. No seals can be caught except by compulsion, whether pups or not. As a matter of fact, the seals, when driven, tire and sink on to their haunches after progressing for 50 yards or so, and when in that condition can be approached and "controlled" and killed by man.

Females.

79. It is certainly a favourable feature that owing to the inability of the seal, when driven on shore, to escape, great discrimination can be exercised in the killing. But the boast that females are never killed is peculiar to this one industry. The idea was started among the Russians in the year 1834, and has since become a tradition, especially with the natives. The same theory inspires the United States' Commissioners in the elaborate calculations made in their Report by means of imaginary theories as to what ought to be, and in which no notice whatever is taken of the large numbers of females which must come into being every year, and while all surplus males are killed off, must result in a very large excess of females, and great and unnatural disproportion of the sexes.

80. In no other case of the control and killing of animals by man is this rule observed. With cattle, sheep, deer, rabbits, pheasants, partridges, salmon, in every case in short, females are killed as well as males; and in all cases the "herds" have been successfully maintained from time immemorial. To kill males only is obviously to interfere with the course of Nature and results in a disproportion of the sexes which has serious effects on the breeding-grounds, when an excess of females must lead to ineffectual service by the males, and to females wandering to other haunts





in search of males. It is well ascertained by experience with sheep, cattle, and deer, all polygamous and uniparous, that it is best each year to kill a certain proportion of females. The details provided by experts are given in Appendices.

81. On p. 152 the statement is made that "*the most stringent rules are enforced to prevent any disturbance of the breeding seals.*"

It is true that over and over again notice has been taken of several causes of disturbance which have resulted in stampedes, whereby hundreds of pups have been crushed to death. Smoke from passing steamers, smell from oil-boilers, perpetual visiting of the rookeries (see the British Commissioners' Report, p. 59), are among such causes.

But one cause that has operated greatly in recent years has been the necessity, while the 100,000 quota had to be provided, of driving seals from close to the rookeries. This evil involves the more frequent inclusion of females in the drives. But its evils are very fully described by the Special Treasury Agent in his Report for 1890. He states :—

Disturbance.
—

82. In regard to the "manner of taking" seals (p. 135 *et seq.*), the statement is distinctly made,

Methods.
—

"It is the universal testimony of all acquainted with the methods employed that they cannot be improved upon."

It will be observed, however, that the statements quoted from various authorities are evidently made in rebuttal of definite statements to the opposite effect, and are very limited in number.

83. Other authorities are of quite an opposite opinion.

The United States' Commissioners, for instance, in their Report (p. 361), state: "No doubt that in some instances excessive driving has been allowed . . . that proper care has not been taken to eliminate the non-killable seals," and they recommend the employment of more responsible and competent officers.

But it is the Special Treasury Agent, in his Report for 1890, who in several passages describes the evils of over-driving, and other highly injurious and destructive details in the methods at present employed on the Pribyloff Islands.

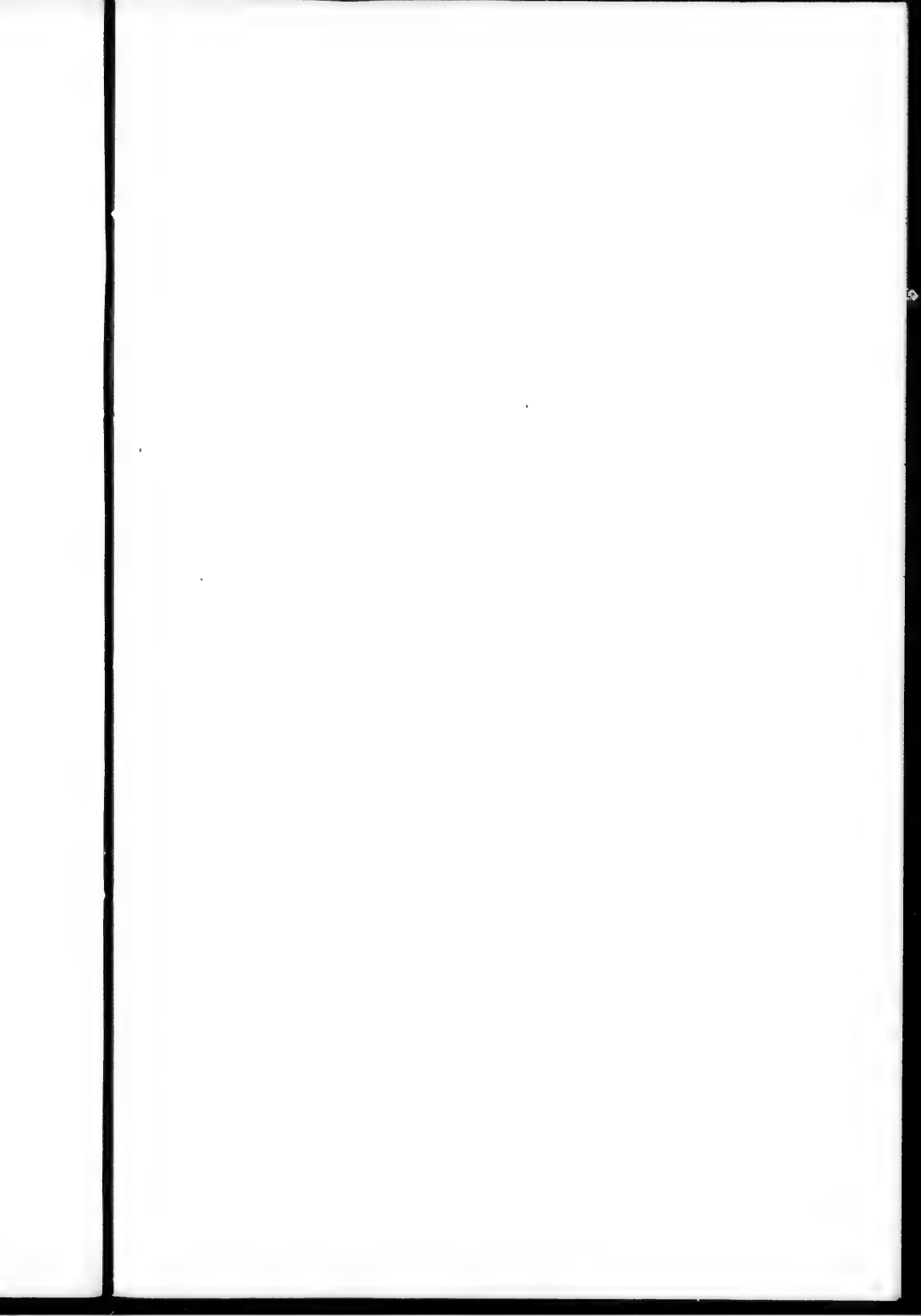
In the Report of the British Commissioners (pp. 121-133) will be found quoted the various authorities on this point.

84. The evils of driving have also been acknowledged by the local authorities in the new precautions and improvements which they have from time to time devised and adopted. If it is true, as stated on p. 158, "*Certainly no such seal thus driven was ever seriously injured or his virility affected by such redriving,*" why was all the care and circumspection enjoined detailed in the following pages, and why was it specially ordained, and frequently, that all means must be taken to shorten the length of the drives?

(c.) *Decrease of Herd.*

85. The decrease of the seal herd may be said to be the *causa motiva* of the whole question. It is the prospect of the loss of a supply of seal-skins which has stirred the various interests, commercially concerned, to agitate for Government interference and protection. The United States' Case is therefore bound up in the main with this aspect of the question.

86. It is, however, to be observed that the decrease of the seal herd is attributed, throughout Part II of their Case, alone to the injurious effects of pelagic sealing. The larger question,



viz., the rights and interests of pelagic sealers, that is of an industry shared in alike by British and United States' vessels, is ignored altogether, while the claims of the one American Company (which has secured a high-priced lease of the Pribyloff Islands) to crush their legitimate rivals are alone advanced and supported in the United States' Case. These claims culminate in the astonishing prayer with which the United States' Case concludes (p. 303):—

"That should it be considered that the United States have not the full property or property interest asserted by them, it be then declared and decreed to be the international duty of Great Britain to concur with the United States in the adoption of such regulations as will effectually prevent the capture anywhere upon the high seas of any seals belonging to the said herd."

87. Unfortunately for this strange plea, based throughout on an ingenious juxtaposition of results and assumed causes, the argument is in direct contradiction of the known facts of seal life.

88. Specially is this evident in dealing with the decrease of the seal herd. This will be amply proved in the succeeding detailed criticism of the United States' contentions.

89. In regard to the general fact of the decrease, the remarks on p. 93 as to the impossibility of an actual census of seal life, and as to the practicality of watching increase or decrease by means of comparing the area covered by seals in given years, are in thorough accord with the views of the British Commissioners, as set out on pp. 64 to 67 of their Report. It is there shown, however, that this latter method has seldom been adopted because of the continuous changes in the personnel of those in charge of the islands. The only case of the same individual forming estimates by measurements in different years on similar lines is that of Special Treasury Agent Elliott in 1872-74, and again in 1890. But neither of these Reports are even alluded to in the United States' Case, although both Reports were very carefully considered, along with other contemporary records and observations, by the British Commissioners.

90. In regard to the particular facts of the decrease, Part II of the United States' Case deals but lightly with the two most important points, viz., the recorded dates and the kind of decrease.

Date of commencement.

91. In regard to the dates when the decrease commenced, the British Commissioners (pp. 116 *et seq.* of their Report) give numerous quotations to show that suspicions were first aroused in 1875 by Captain Bryant, who stated before the Congress Committee in 1877:—

“I think that the number of 100,000 was a little more than ought to have been begun with. I think if we had begun at 85,000 there would have been no necessity for diminishing.”

In the Report of the same Committee it is stated (House of Representatives, 44th Congress, 1st Session, Report No. 623, p. 11):—

“It is certain that to kill more than this number (100,000) would tend to a rapid decrease of the annual supply, and end in the extinction of the animals on these islands long before the expiration of the twenty years that the lease had to run.”

92. As a matter of fact the official records of seals killed on the islands during the nineteen years in which the lease was in full operation show an annual average of 104,000. So that extinction of the animals should have followed even according to the deliberate opinion of the Congress Committee.

93. The allusions to decrease in the official Reports are very few. In 1882, however, Assistant Treasury Agent Wardman specifically reports a decrease in the number of “killable” seals on St. George.

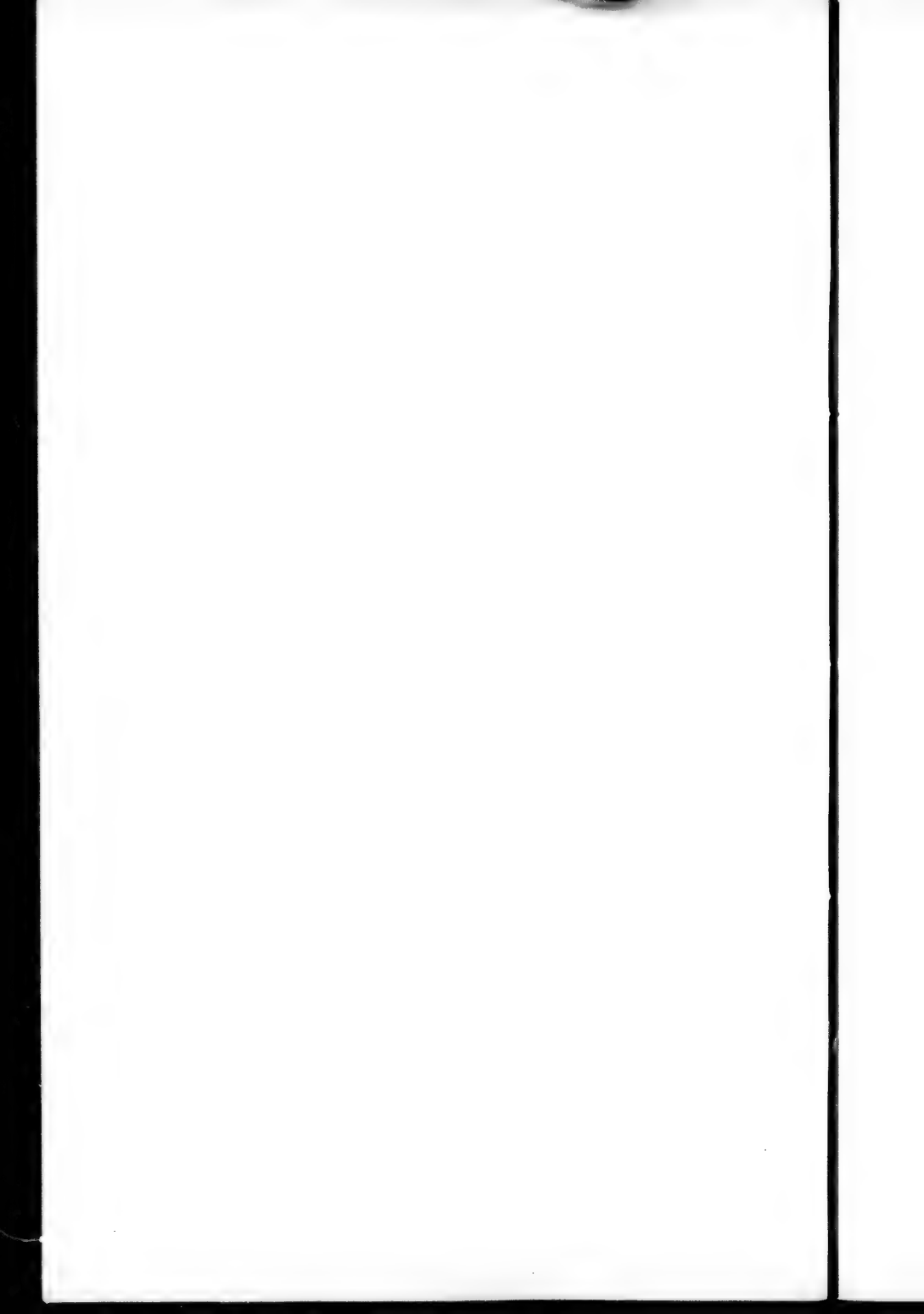
94. Other recorded facts are, however, highly significant. Thus, in 1872, the Treasury Agent reported that 100,000 seals could be easily obtained—

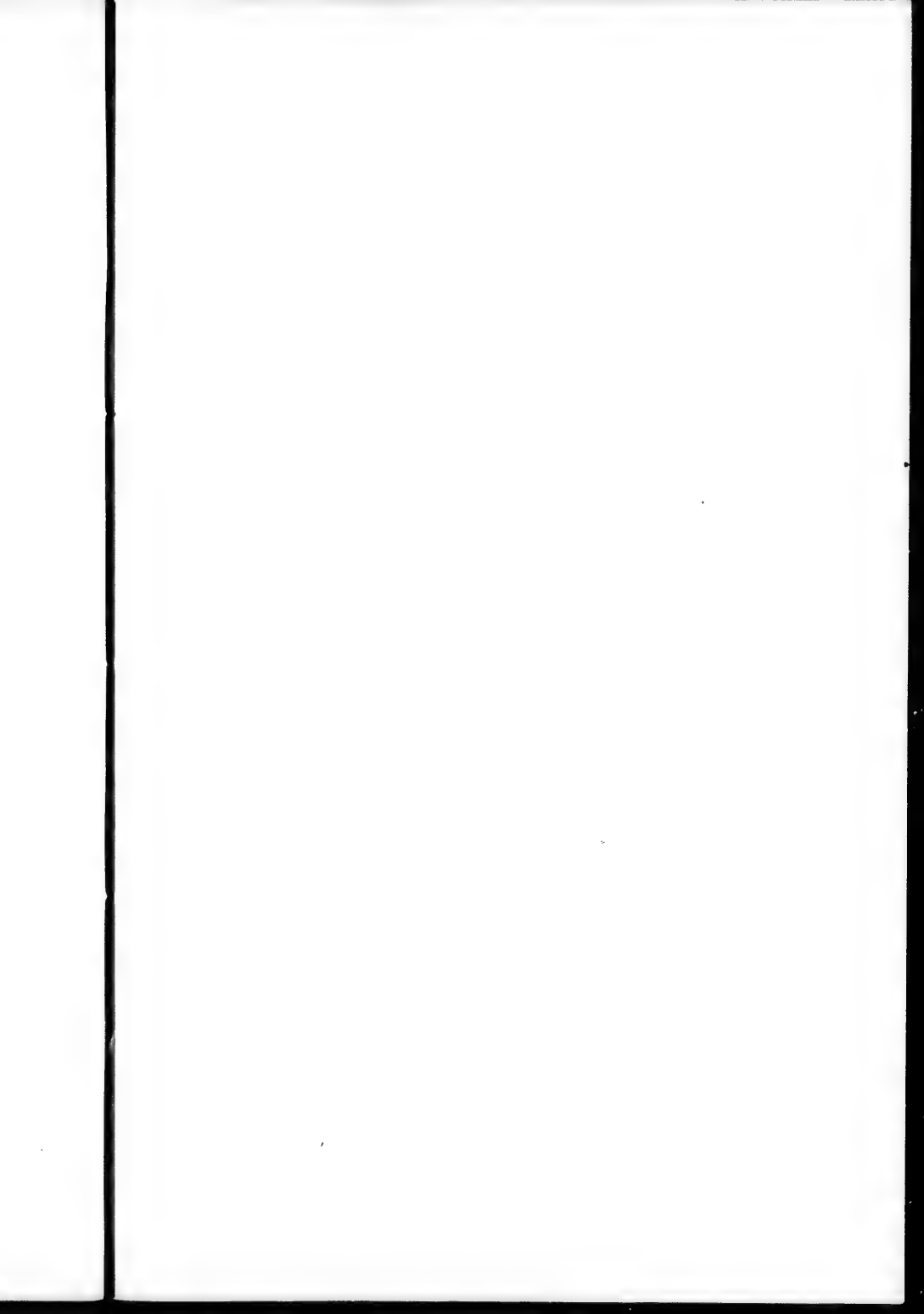
“within a radius of 1½ miles from the village and from the salt-house on North-East Point.” (United States' Census Report, p. 72.)

But in 1879 it became necessary for the first time to extend the drives to the Polovina and Zapadne hauling-grounds.

95. Among other authorities, Colonel J. Murray, Assistant Treasury Agent, states in his Report for 1890:—

“The whole truth must, nevertheless, be told, and that is that the seals have been steadily decreasing since 1880.”





Dr. H. H. McIntyre, at the time Agent for the lessees, admitted before the Congressional Committee in 1888 (House of Representatives, 50th Congress, 2nd Session, Report No. 3883, pp. 116-119) that the seals had decreased since 1882, and that it had become difficult to obtain the full quota of marketable skins, adding:—

"there are at present too few bull seals to keep the rookeries up to their best condition."

Mr. D. Webster informed the British Commissioners in 1891 that seals began notably to decrease in 1879 and 1880. Mr. Morgan said that he first noticed decrease in 1884.

96. Further evidence of fact is forthcoming in regard to the lowering of the standard of size in the skins taken.

Dr. H. H. McIntyre (p. 118, as above) says:—

"In 1883 the sizes decreased, and have decreased ever since."

It is well known on the islands that in 1886 and 1887 the reductions in weight of skins was fully recognized; that in 1888 many 5-lb. and even 4½-lb. skins were taken (the old average having been from 6 lbs. to 9 lbs.) and 2-, 3-, and 4-year-olds killed. In 1889 as many as 40,000 very small skins were taken, a great proportion not exceeding 3½ lbs. But this was the last year of the Company's lease, in which Colonel Murray says the Company scraped up any seal they could lay hands on.

In 1890 Treasury Agent Goff writes, in his Report:—

"There have been no 2-year-olds of an average size turned away this season; they were all immediately clubbed to swell the catch."

97. The natives on the islands informed the British Commissioners (Report, pp. 138, 139) that in 1883 the rookeries were much reduced from what they were when the Americans first took charge, for instance, from South-West Bay, St. Paul's, they "used to drive 3,000, but only 1,000 now," and that the decrease became noticeable in 1882. Many places were pointed out to the British and the United States' Commissioners on St. Paul in 1891, by the various island authorities, especially by Mr. Tingle, on which there had been "no seals since 1879."

98. But perhaps the clearest evidence as to the date when the decrease commenced is to be found in numerous passages in the "Testimony" put forward by the United States. In this the dates of the commencement of the decrease are placed before 1884 by most of the authorities with any personal experience of the islands. We may quote the following:—

(i.) Dr. McIntyre, Treasury Agent, states (pp. 45, 51, and 52):—

"Up to 1882 there was no difficulty in procuring the required number of killable seals."

"I left the rookeries in 1882 in their fullest and best condition, and found them in 1886 already showing a slight falling-off, and experienced that year for the first time some difficulty in securing just the class of animals we desired. . . . We were obliged in 1888 to content ourselves with smaller skins than we had hitherto taken. This was in part due to the necessity of turning back to the rookeries many half-grown bulls, owing to the notable scarcity of breeding males."

"A very noticeable decrease in the herd commenced, I have already pointed out, in 1886. I was, therefore, always alert to see that the due proportion of breeding males of serviceable age was allowed to return to the rookeries. This was a comparatively easy task prior to 1882, but became from year to year more difficult as the seals decreased."

(ii.) Mr. Morgan (p. 63):—

"In 1885, and in every year thereafter, there was a marked decrease in the number of marketable skins that could be obtained. We were able down to the last year (1887) to get our total catch of 100,000 seals, but in order to get that number we had to take what in previous years we would have rejected, namely, under-sized skins. . . . Up to the year 1884 the breeding space in the rookeries had increased, and from that year down to 1887 the acreage covered by seals constantly diminished."

(iii.) Mr. Morton (p. 69) states:—

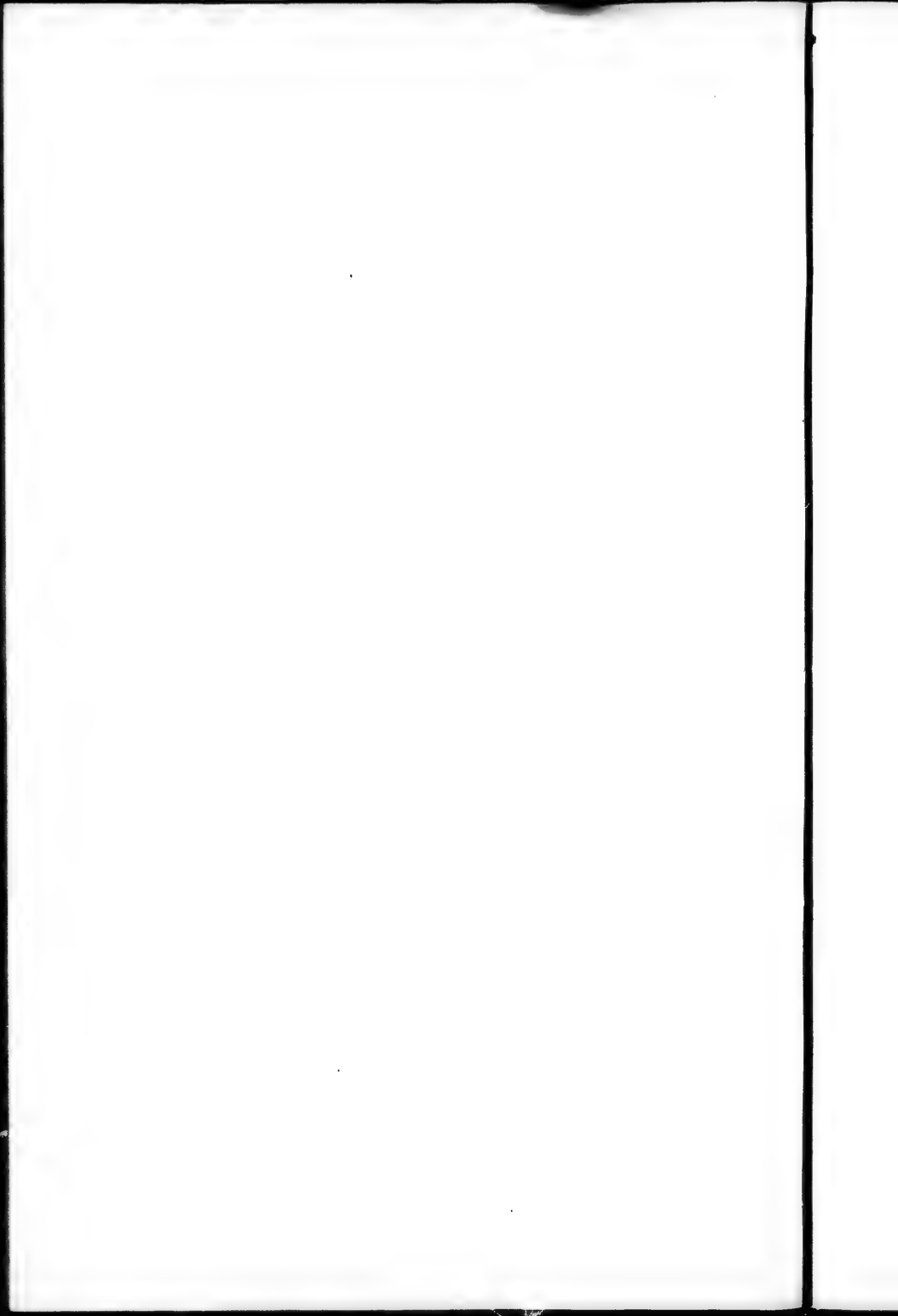
"Since 1883 there is said to have occurred a very material diminution of the seal life on the Pribyloff Islands."

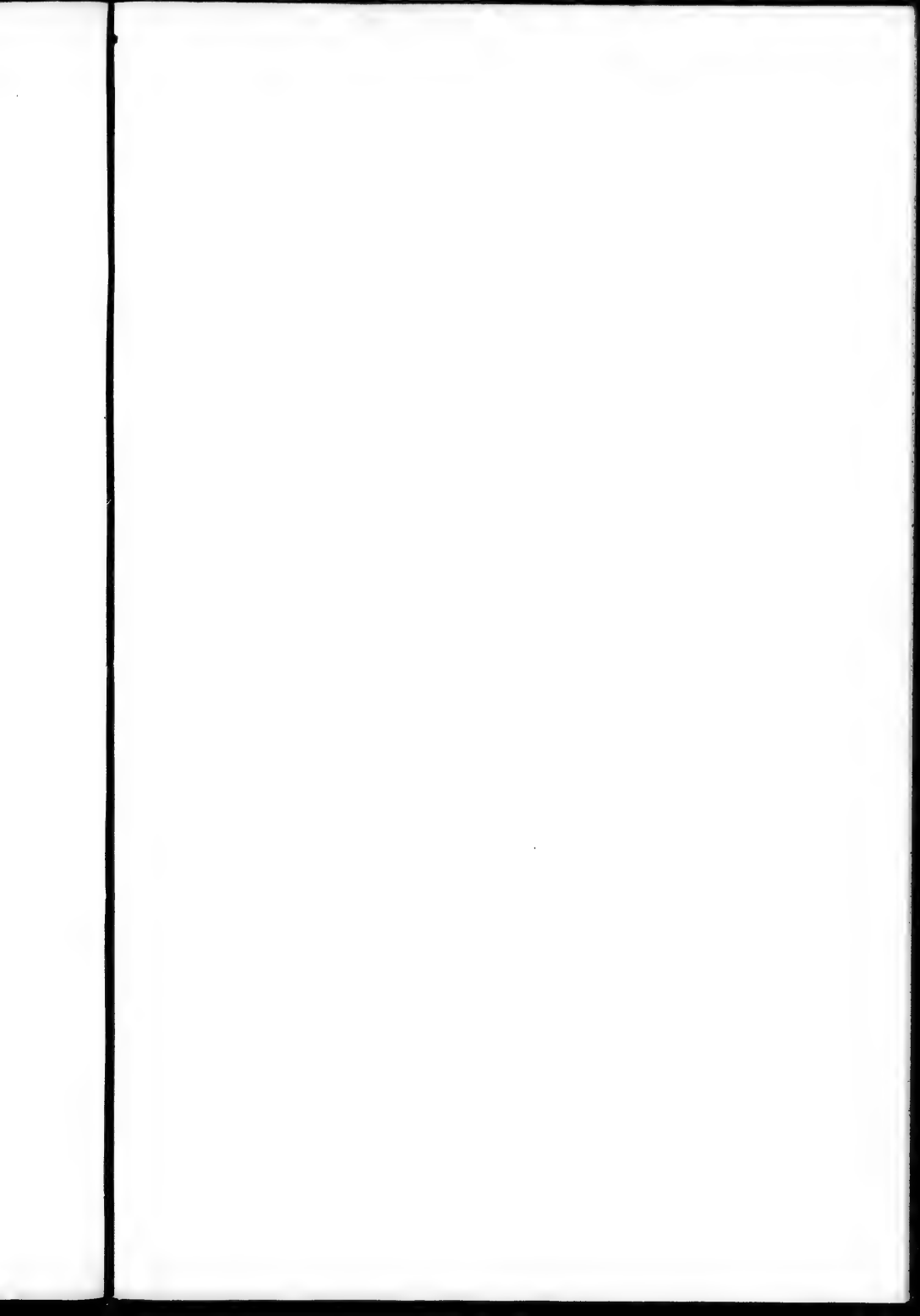
(iv.) Mr. Niebaum (p. 78.) states:—

"As early as 1882 it was noticed that the rookeries had stopped expanding. . . . In 1887 we were forced to commence taking smaller skins in order to obtain our quota and preserve enough breeding bulls."

(v.) Captain D. Webster (p. 181) states:—

"My observation has been that there was an expansion of the rookeries from 1870 up to at least 1879. . . . In





the year 1880 I thought I began to notice a falling-off from the year previous in the number of seals. . . . In 1884 and 1885 I noticed a decrease, and it became so marked in 1886 that every one on the island saw it."

(vi.) The native Chief on St. Paul Island (p. 99) states:—

"From 1870 to 1884 the seals were swarming. . . . All of a sudden, in 1884, we noticed there were not so many seals, and they have been decreasing very rapidly ever since."

99. Further evidence to the same effect is to be found in abundance in vol. ii of the United States' testimony.

100. It is perfectly clear that material decrease was noted by all as early as 1884, and by many as early as 1881. Thus, as to date of commencement, the United States' testimony leads even further than the otherwise significant contention in the United States' Case (p. 105):—

"From the year 1880 to the year 1884-85 the condition of the rookeries showed neither increase nor decrease. . . . In 1884, however, there was a perceptible decrease noticed. . . . Since that time the decrease has become more evident from year to year."

101. In regard to kind of decrease, in general the actual complaint on the Pribyloff Islands is that there has been a continuous decrease in killable males (from 3 to 6 years old), and that the pelagic sealers chiefly destroy females. The actual complaint of the pelagic sealers is that there is a dearth of males because too many males are taken on the breeding islands.

102. On p. 169 the Report of Treasury Agent Goff is quoted for the year 1890, in which it is shown that it was impossible in that year to obtain more than 21,338 young males on the islands, whereas in previous years it had been possible to obtain 100,000. On p. 45 Treasury Agent McIntyre points out that—

"in 1887, 1888, and 1889 the depleted rookeries would not furnish the quota of 100,000 large skins, 2- or 3-year-old male seals were taken to make up the quota."

103. It is therefore astonishing to read, on p. 175 of the Case, the assertion:—

"It has also been shown that the decrease in the seals took place primarily among the female portion of the herd."

Kind of decrease.

There is nothing whatever, either in the previous argument or in the testimony, to bear out such an assertion.

104. As a matter of fact, the decrease, which it now seems had been noticed on the islands in a growing dearth of young males ever since 1880, was not officially taken note of until after the year 1889, the last year of the lease of the Alaska Commercial Company. In that year it had been found impossible to obtain more than 50,000 "killable" males, and the remainder of the quota taken was from the younger classes of seals of from 2 to 4 years old.

Cattaca,
—

105. Such being the facts as to date of commencement and kind of decrease in seal life, the problem as to causes can be entered upon.

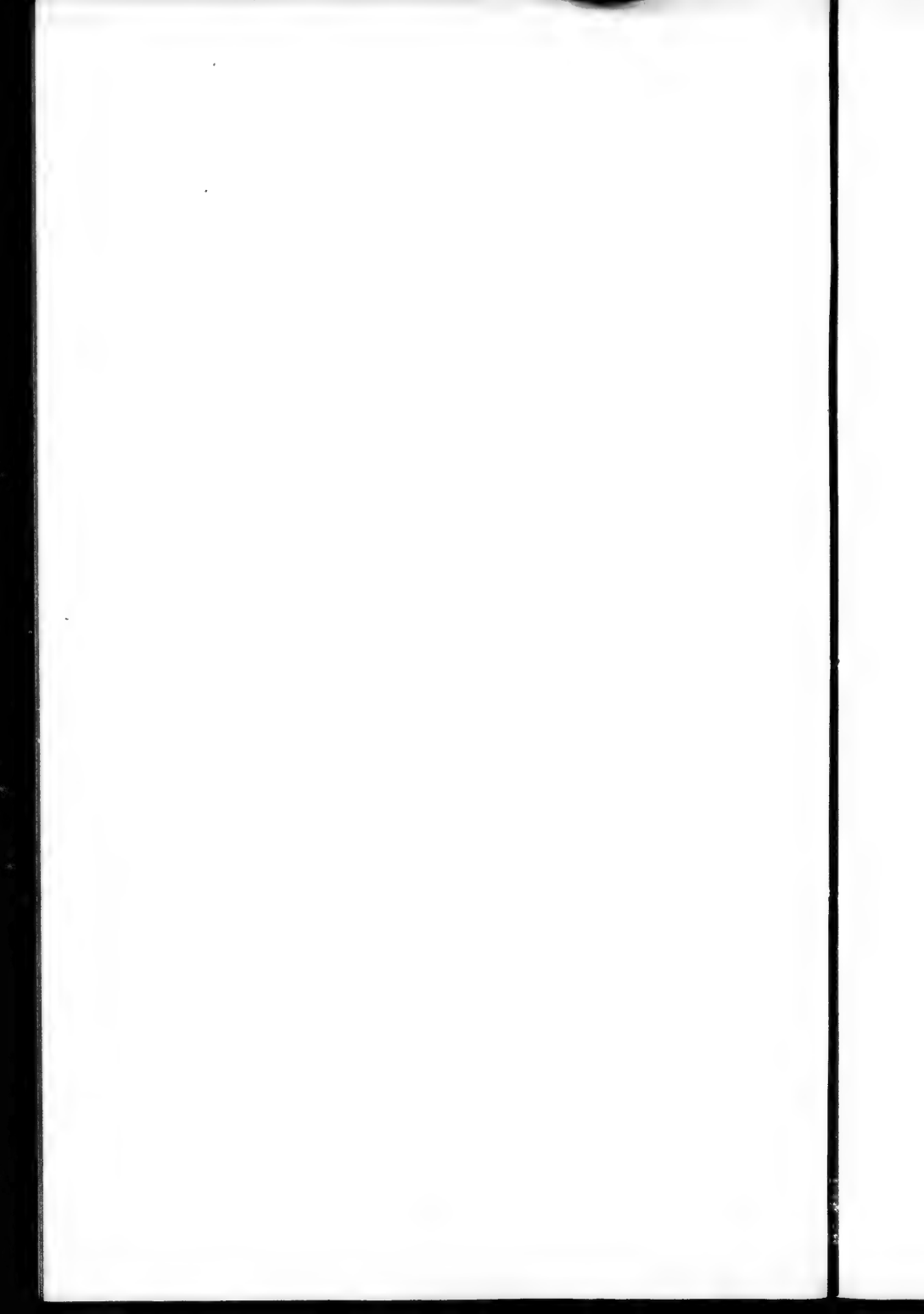
106. The United States' Case (p. 177) asserts---

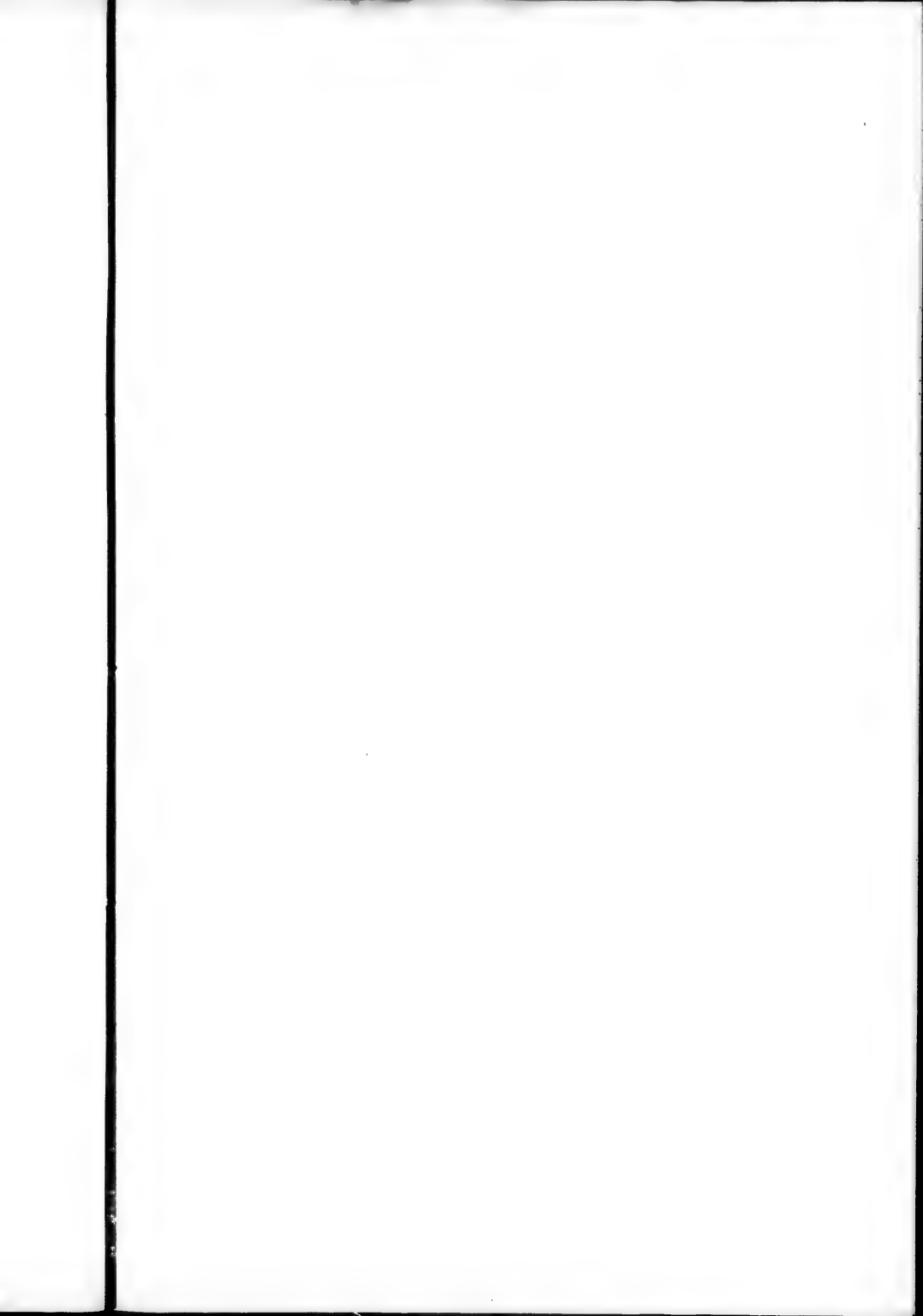
"the sole cause of the present depleted condition of the Alaska seal herd is pelagic sealing."

107. The testimony summarized on p. 177 in support of this assertion is that of Government officials, men interested in the Pribyloff Islands fishery, and Indians hostile to their great rivals in pelagic sealing. The general tendency of this evidence, most of it mere statements of opinion or hearsay, is based on the assumption given on p. 185—

"that the decrease in the seal herd has been proportionate to the increase in the sealing fleet."

108. In the United States' Case (vol. i, p. 590, and vol. ii, p. 496) are set out the numbers of schooners engaged in pelagic sealing, and also the catch of the schooners year by year. It is important that these be borne in mind.





PELAGIC CATCH.

Year.	Schooners.			Total Catch (Dr. Merriam, vol. i, p. 366).
	Total Number (vol. i, p. 590).	Official List of British.	Number entered Behring Sea.	
1875	1	..	..	1,646
1876	1	..	..	2,042
1877	..	..	..	5,700
1878	1	3	..	9,593
1879	2	4	..	12,500
1880	16	4	..	13,600
1881	12	5	..	13,540
1882	15	8	?	17,700
1883	13	9	?	9,195
1884	11	11	1	14,000
1885	15	13	2	13,000
1886	34	16	16	38,907
1887	47	17	15	33,800
1888	39	21	17	37,789
1889	68	22	22	40,998
1890	61	30	23	48,519
1891	115	50	<i>Modus vivendi</i>	62,500

109. On p. 216 certain further conclusions are definitely stated as the—

"results of pelagic sealing."

We are told that—

"between 80 and 90 per cent. of the seals taken are females; of these, at least 75 per cent. are either pregnant or nursing; . . . at least 66 per cent. of the seals killed by white hunters are never secured."

110. Returning to the simple facts, it is seen that the pelagic catch did not assume any great proportions until the year 1886, and for five years until and including 1890 the average total taken, according to the United States' Commissioners, was 40,000, the average for the previous ten years having been only 11,000.

111. But of this catch the United States contend that at least 80 per cent. are females—a kind of seal not killed on the islands, but the slaughter of which involves the death of pups, one-half of which are males and one-half breeding females. They would make an addition of not less than 60 per cent. to these figures for seals killed and not secured. Thus, even according to the figures given by the United States, the accuracy of which is not conceded, and which will hereafter be dealt with, we arrive at the following figures as affecting the question in hand:—

112. In the ten years previous to 1886 an average

of, say, 9,000 females being assumed, increased by 60 per cent. loss to 14,000 breeding females, represents an annual loss of 7,000 male pups.

For the five years 1886-90 the annual loss, on the same assumption, would be 25,000 male pups.

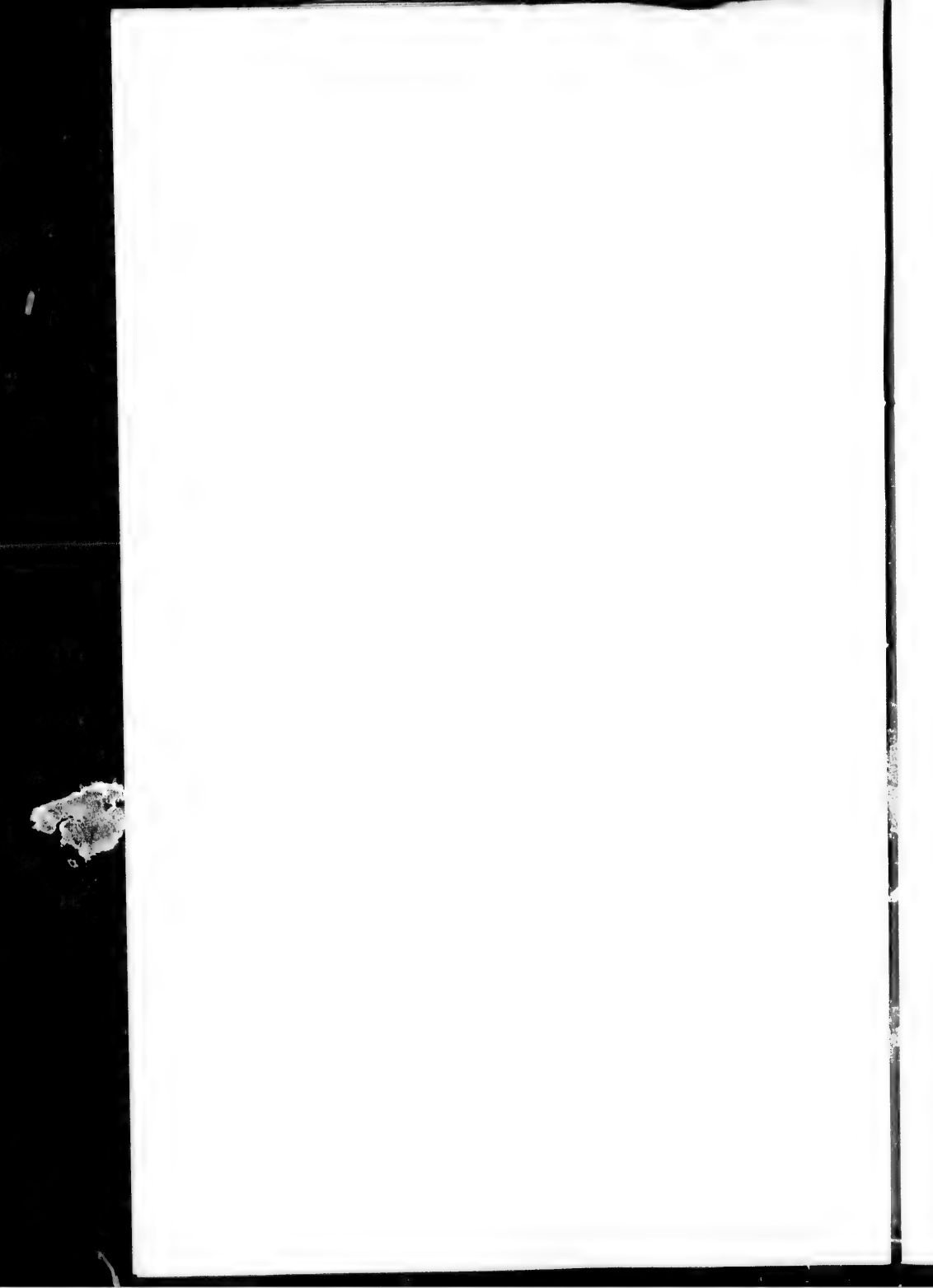
But in 1889 there was acknowledged a deficit of 50,000 4- to 6-year-old males, the mothers of which must have been killed in the years 1883, 1884, or 1885—years in which, according to the Table given by the United States' Commissioners (p. 366), the pelagic catch reached an average total of only 9,000 seals, representing an annual loss of less than 6,000 male pups—to mature in 1889—even on the extreme assumptions advanced by the United States as to proportions of females killed and of seals killed and lost.

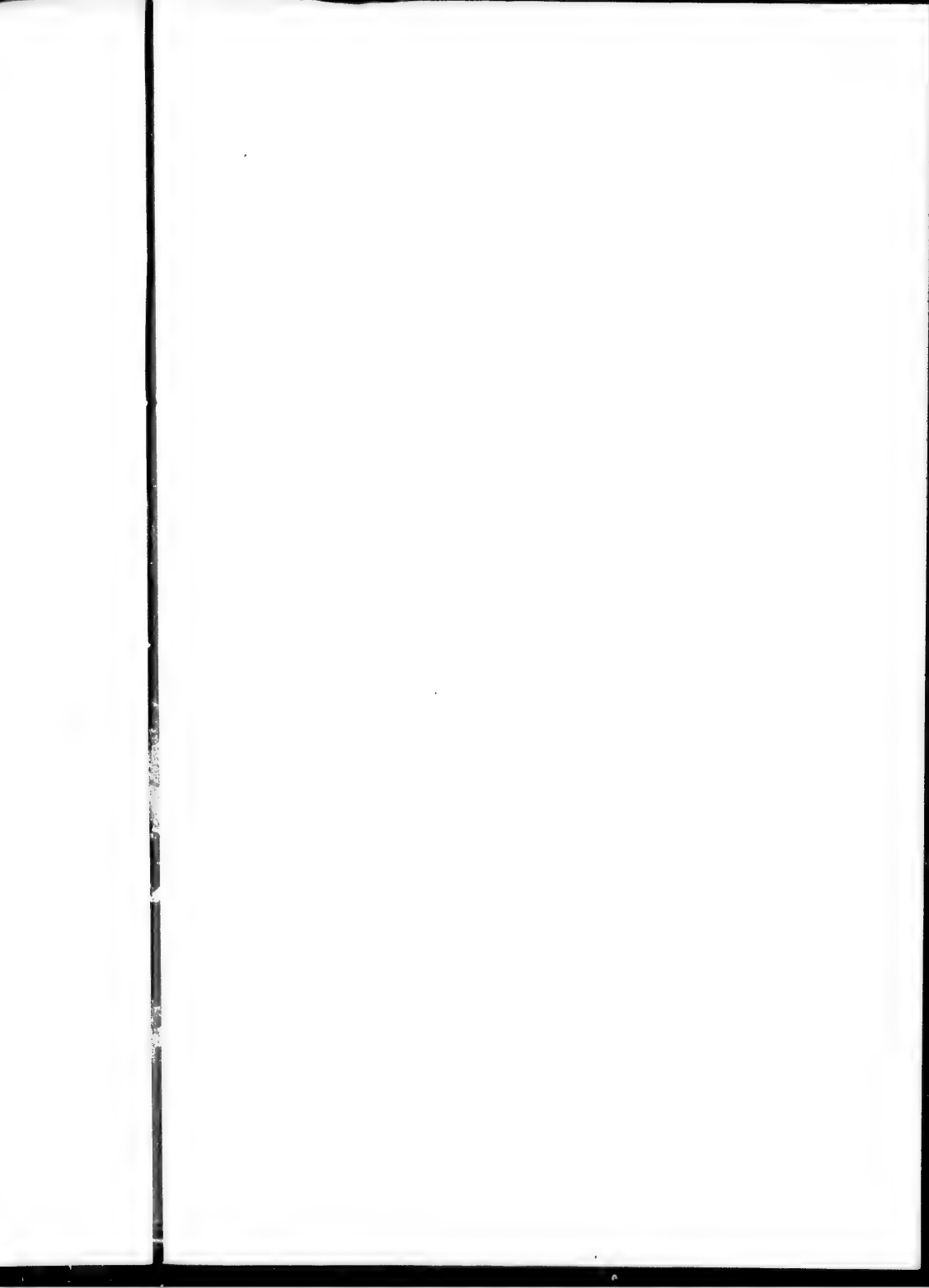
113. It may further be pointed out that this cause—"pelagic sealing"—consisting in the slaughter of gravid and nursing females, is said to have its main effect in the destruction of young pup seals. It is therefore obvious that the effect of any one year's killing will not be visible on the rookeries for at least three years in regard to females and six or seven years in regard to breeding males. It is pointed out in the totals of the pelagic catch and numbers of schooners employed that the totals were immaterial until 1886. It is therefore certain that the effect of the killing in the first year, that is, 1886, would not become noticeable as to the supply of females on the rookeries till 1889, as to the supply of 4- and 5-year-old killables on the hauling-grounds until 1890 and 1891, and as to breeding bulls on the rookeries until 1892.

But, as has been clearly shown in the United States' Case and in the ample testimony put forward by the United States, shrinkage of the rookeries—dearth both of males and females—had become self-evident in 1884 and 1885, and dearth of 4- to 6-year-old males on the hauling-grounds was found by 1889 to have reduced the numbers available to one-half of what could be secured in previous years.

114. It is not denied that the growth of pelagic sealing, in that it involved the taking of 20,000 to 30,000 more seals, has been a contributory cause; but it is contended, from the facts advanced by the United States and otherwise on record, that the decrease in seals on the Pribyloff Islands had attained to dimensions of such

Summary as to decrease, and its
asserted cause.





gravity as to threaten the very existence of the rookeries before the development of pelagic sealing had had sufficient effect to account for any such results.

115. It is, in addition, to be noted that the figures of the pelagic catch above dealt with are properly subject to two classes of reduction, in so far as they represent the numbers of seals frequenting the Pribyloff Islands taken in the open sea, because the totals here given include not only seals taken in raids on shore or along the shore fronts of the breeding-islands, but also, and in later years very considerable, numbers of seals taken on the west side of the North Pacific and often around breeding-places on the Commander, Kurile, and Robben Islands.

116. In regard to raids, the admission is made in the United States' Case (p. 174) that "a few thousand skins" were thus secured. But in the evidence (vol. ii) we find incidental references which fully bear out the estimate of this cause advanced by the British Commissioners in their Report (pp. 125-131). It has never been contended that raids by themselves caused the decrease in the seal herd, but the actual evidence amply bears out the contention of the British Commissioners (p. 131) that—

Raids.

"in regard to the practical effect of these raids on the total catch of seals, it would appear that from the annual recorded totals of the catch landed from schooners very material deductions must be made, and transferred to the annual total catch on the Pribyloff Islands as being the result of operations on and around the rookeries on the Pribyloff Islands, and forming, therefore, properly speaking, no part of the pelagic catch."

117. Concerning the extent to which raids are committed both on shore and in the adjacent waters, there are naturally no records of all cases. But complaints of and precautions against such raids have been taken annually ever since the United States first took charge of the Pribyloff Islands. In 1891 the island authorities bitterly and continuously complained to the British and United States' Commissioners of the disturbance and destruction at the time being caused by schooners close by the rookery shores.

118. It is certainly not correct to state that all raids must necessarily be known to the residents. In fact, in nearly every case on record the raid has only been accidentally discovered. It is not

in accordance with observed facts to state, as is stated in the United States' Case (p.)—

"if other raids had taken place besides these, the fact would certainly have been known on the islands, as their effect would have been seen on the breeding-grounds in the shape of dead carcasses of pups and other seals."

In the first place, in regard to the carcasses of dead pups, the United States' evidence teems with allusions to their discovery—a matter which will be dealt with later on. But in regard to carcasses of adult seals, it is the invariable custom of raiders, whether on shore or along the shore fronts, to take the carcasses on to the vessels and skin them leisurely at sea.

119. In the evidence put forward by the United States there is much proof of these statements.

(i.) Mr. Glidden (vol. ii, p. 111) says:—

"I only knew of one raid upon St. Paul while I was there (1882-85). It was by a Japanese vessel, and they killed about 100 seals, the carcasses of which we found on board when we captured the vessel."

It is notable that every one of the officials in his affidavit, and speaking from memory, invariably states that there were very few raids while he was in charge.

(ii.) Mr. Morgan, lessees' agent, states:—

"One cause of destruction is raiding, which has been done upon the shores of these islands. A half-dozen such raids are known to me personally; but while it is not possible for me to state with certainty the skins actually secured by such raids, I believe that although such raiding is detrimental, its injurious effect as compared with the disastrous results of pelagic sealing is insignificant"

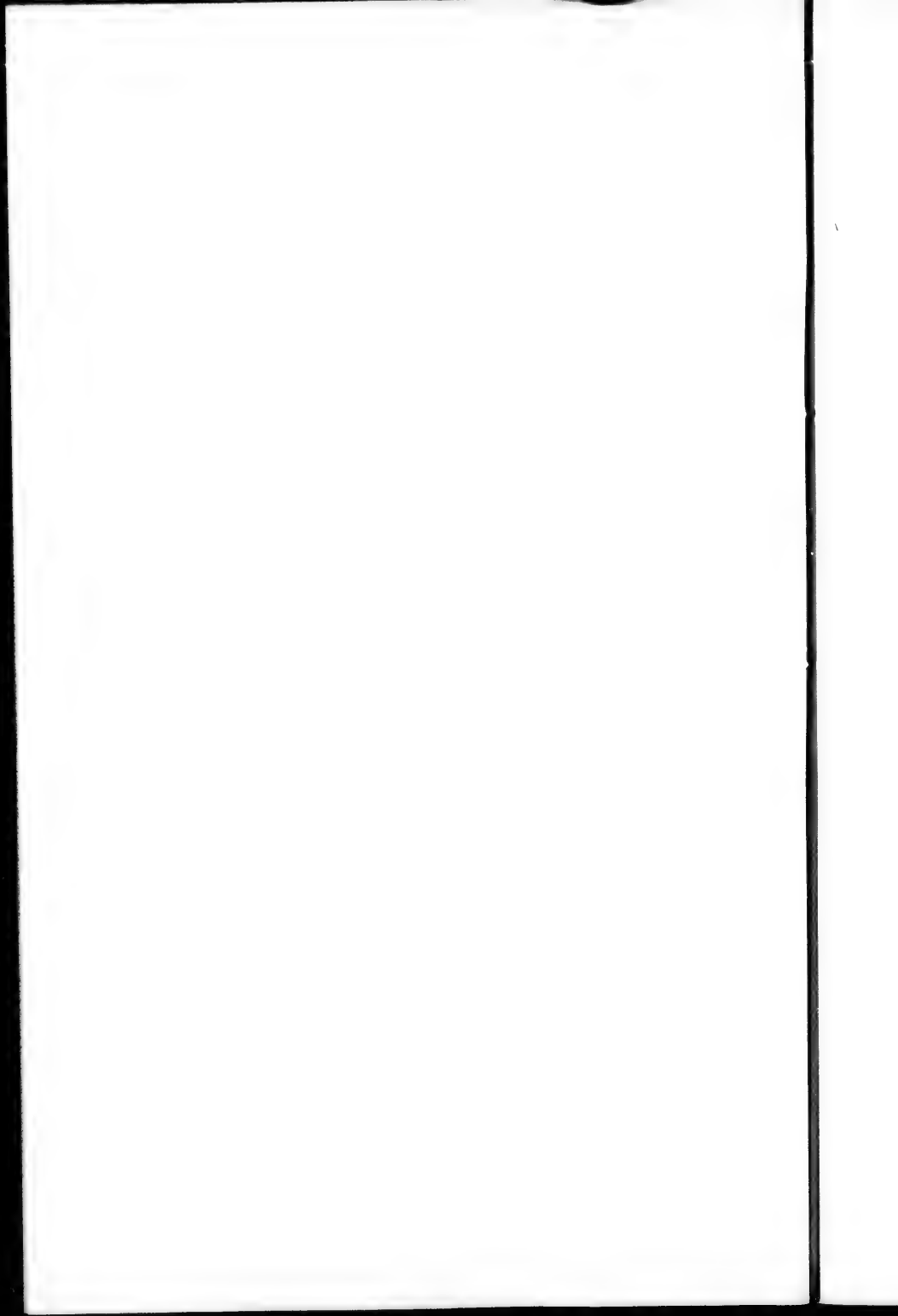
(iii.) Mr. Niebaum, once a Company's employé, states (p. 78):—

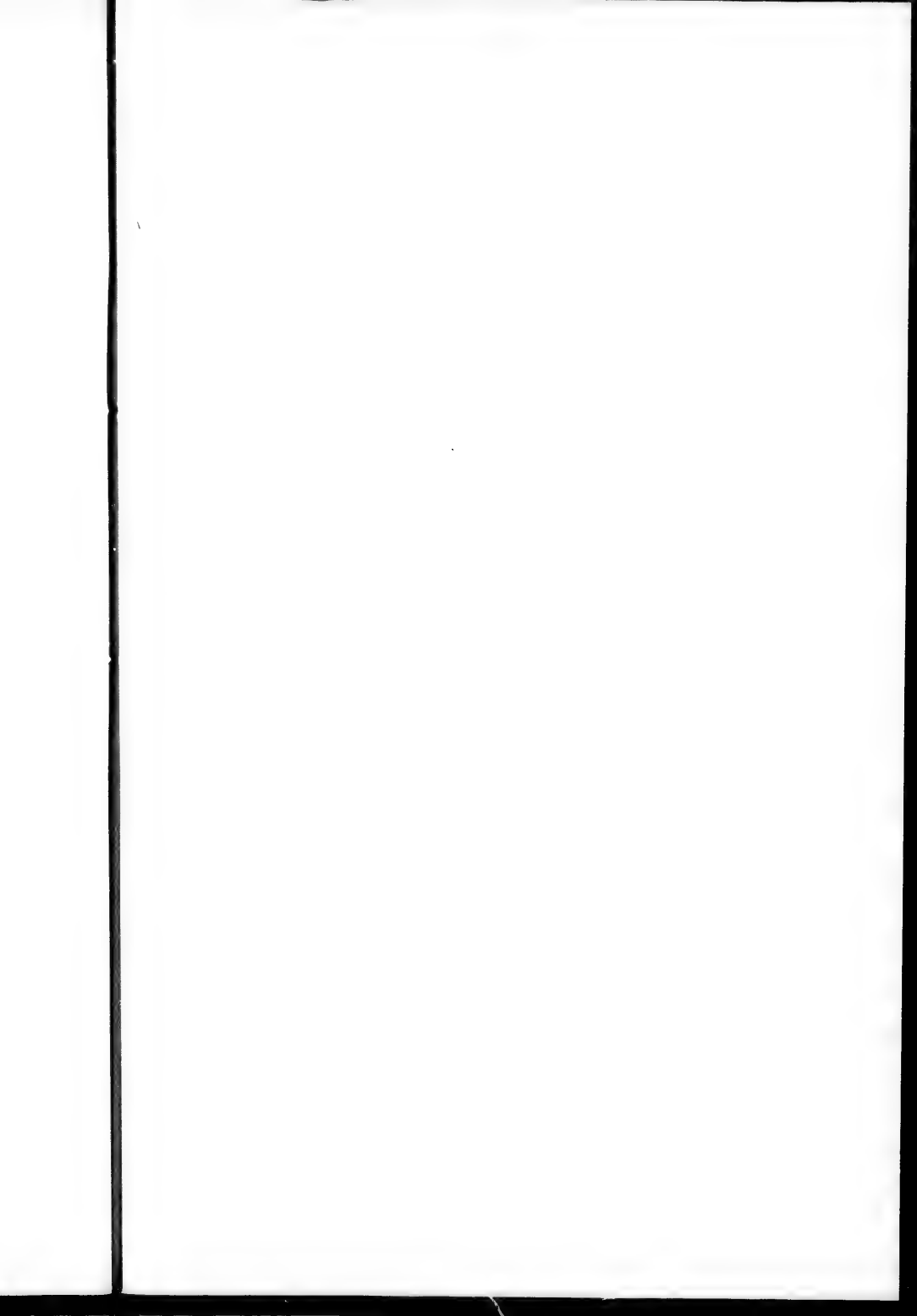
"Raids by poachers on the Seal Islands. Very few of these have occurred, and the number of skins obtained by the poachers has been comparatively infinitesimally small. I think the whole number does not exceed 3,000 or 4,000 skins."

(iv.) Mr. Clark, on St. George's Island from 1884 to 1889, states (p. 160):—

"During my stay several attempts were made by poachers to get on shore and steal the seal, but they succeeded, as far as I am aware, only on three occasions, and in all those three I do not think they killed more than 1,200 or 1,500 seals."

120. [Get Canadian evidence, 1892.]
[818]





121. Special allusion is made on p. 175 of the Case to the statement of these raids prepared on behalf of the Treasury and the Company respectively.

It will be observed, however, that these two lists by no means agree. The Treasury gives raids on the 1st September, 1874, 1875, October 1881, autumn 1884, June 1885, 20th July, 1885, July 1886, 8th August, 1886, July 1887, November 1888, September 1889, August 1890, September 1890, November 1890, 7th November, 1891, and 29th November, 1891.

The Company give records (p. 29) of raids in October 1881, 10th October, 1884, 20th July, 1885, 22nd July, 1885, 17th November, 1888, 30th September, 1889, all on St. George's Island, and that "an examination of the St. Paul record does not show any destructive raids upon the island"—a flat contradiction of the detailed statement made by the Treasury.

122. Perhaps the most important point omitted from the United States' Case in this connection is the fact that on more than one occasion, and many years before any seals whatever were taken at sea, the supply of seals on the Pribyloff Islands fell so short that commercial extermination actually threatened. In all the recorded cases the dearth was due either to want of care and proper restrictions in the slaughter on the islands themselves, or to some natural cause, such as disturbance of the seals or climatic influences.

123. In 1805 the Special Imperial Commissioner Rezanoff found the Pribyloff Islands in a very bad state, and—

"came to the conclusion that unless an end were put to this wanton destruction, a few years more would witness the extirpation of the fur-seal." (Bancroft, p. 445.)

The causes are said to have been carelessness and waste in the killing; 30,000, for instance, had been killed for food and their skins thrown away. Veniaminoff states:—

"From the time of the discovery of the Pribyloff Islands till 1805, *i.e.*, till General Rezanoff came to America, no account was kept of the number of fur-seals killed, and no control whatever was exercised in the matter, owing to the fact that there were a number of Companies engaged in the industry, and therefore many hunters, each of whom tried to take as many seals as possible. But Rezanoff, seeing that this state of things

Previous instances before pelagic sealing

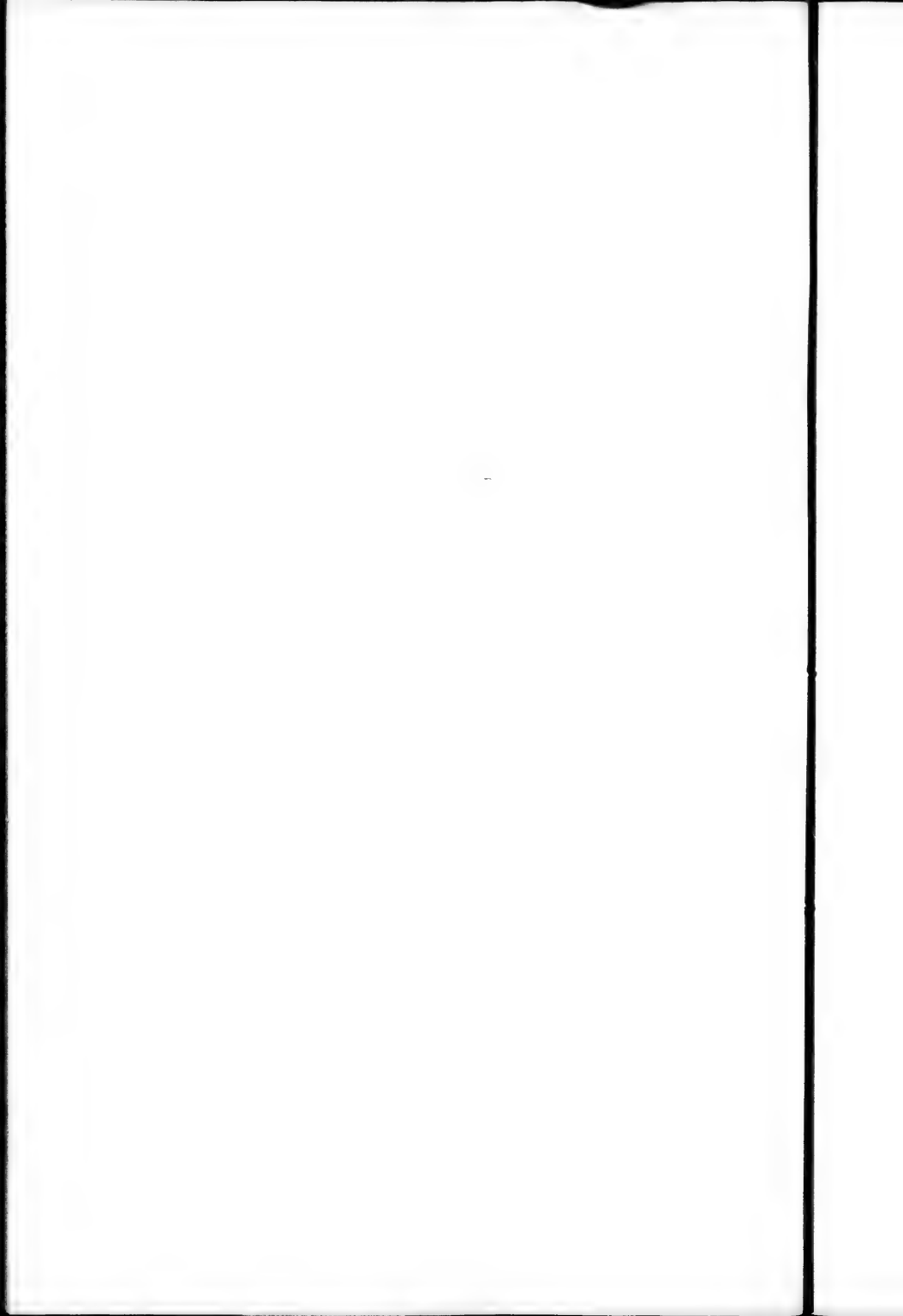
must inevitably lead to the extinction of the species, gave orders for the killing of seals to cease; consequently, no fur-seals were killed in 1806 and 1807 on the Pribyloff Islands, and all the persons employed in the industry were taken to Unalaska. The killing was to commence again in 1808, but, owing to certain circumstances, it was resumed on the Island of St. George only; on St. Paul's Island no seals were killed that year or the following year, and even the year after that only half the usual number of seals were taken on that island. After these close years, *i.e.*, on St. George's Island from 1808, and on St. Paul's Island from 1810 until 1822, the killing went on uncontrolled on both islands; so little thought was taken for the future that even the skatsh were killed for their furs, while the cows perished by hundreds in the *battues* and on the way from the rookeries to the place of slaughter."

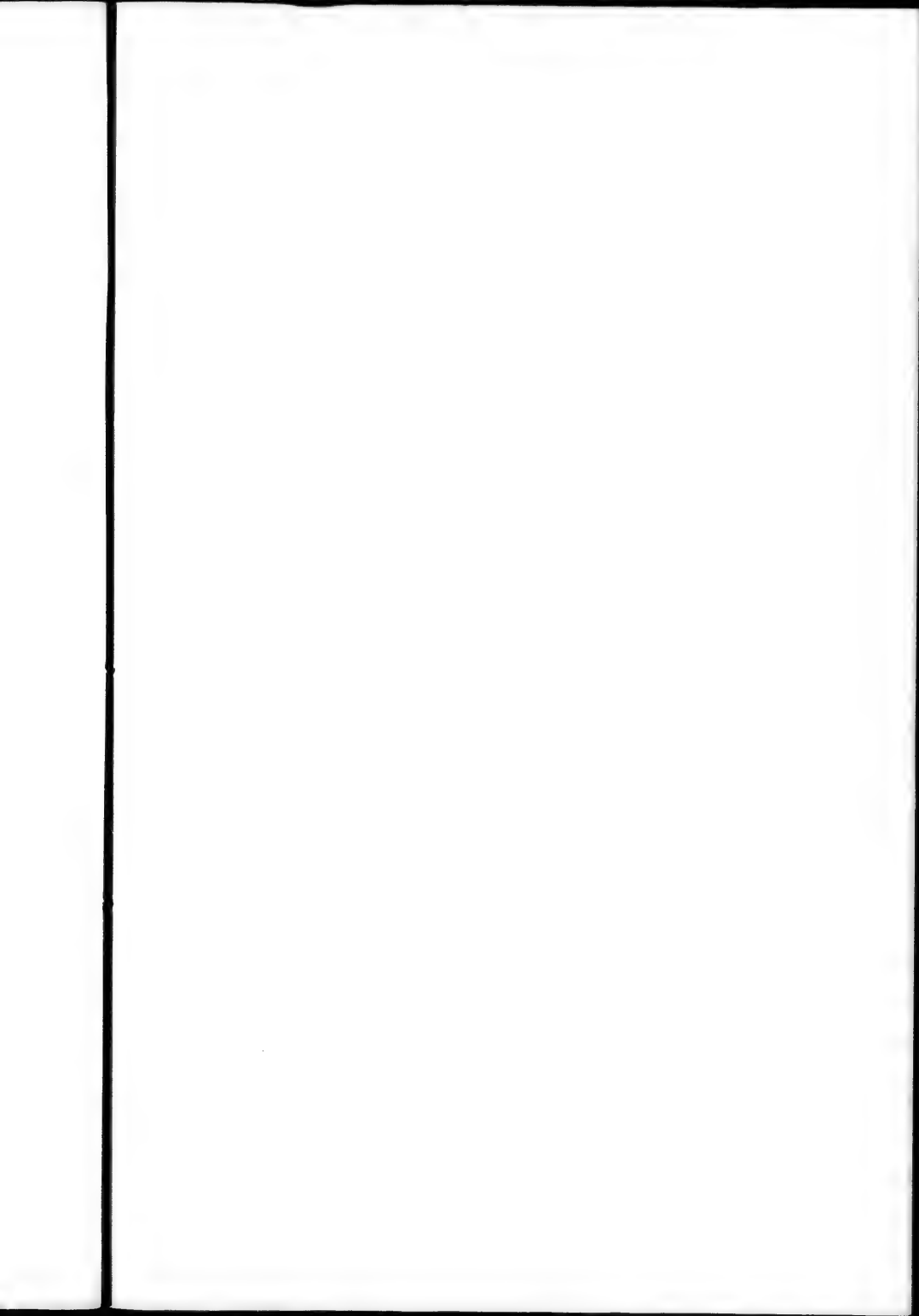
124. Veniaminoff explains that from 1817 to 1837 a gradual diminution of seal life was noticed, and he characterizes the annual killing of 50,000 as excessive and leading to diminution of the numbers of the seals frequenting the islands. In 1822 the killing was reduced from 40,000 or 50,000 to under 10,000 on St. Paul's Island, and from 1822 to 1824 a period of rest was enjoined, which was repeated in 1826-27 for St. George's Island. In 1826, when it was again attempted to take 40,000 on St. Paul, it was found quite impossible, and new precautions and restrictions were advocated. In 1834 the number taken on St. Paul was reduced from 12,000 to 4,000, and this was continued until 1837. In 1836, however, the ice remained around the islands all the summer, and the females especially were unable to land to bear their young. There was that year an enormous mortality of seals, and for many years afterwards the yield of seal-skins was very low.

125. The experience on the islands, therefore, is that if excessive slaughter on shore is indulged in over a period of years dearth of seals must and does ensue, and this at a period when pelagic sealing was absolutely unknown.

126. The argument as to the evidence in regard to decrease to be derived from signs on the grass and rocks is fully dealt with in the Report of the British Commissioners (pp. 68 *et seq.*), who report that, on revisiting the hunting-grounds later in the season to the time when the United States' Commissioners were on the islands, it was generally observed that the seals were, as a matter of

Signs of decrease.





fact, hauled out upon the "yellow" and the green grass.

127. It is therefore advanced as incontestable that the main cause of the dearth of seals on the Pribyloff Islands is due to the excessive slaughter, year after year, ever since 1870. To this cause has been added in latter years the draft made by pelagic sealers; but this, so far as concerns 4- and 6-year-old males (the killing of females not having assumed any material dimensions until the year 1887), would not have any effect on the supply of killable males on the islands until the years 1891 and 1892.

Summary as to decrease

Pelagic Sealing (pp. to).

128. The vigorous attack made on pelagic sealing in the interests of one Company, which happens to hold the Government lease of the Pribyloff Islands, will not bear the light of facts.

129. The waste involved in the method, especially in the numbers that are shot and killed but not secured, is gravely overstated. The statement, p. 194, that—

"the specific gravity of the seal being greater than water it sinks before it can be secured"—

is contrary to the evidence of all practical hunters. This question is gone into in detail in the British Commissioners' Report (pp. 104 *et seq.*), and also in the supplementary evidence collected in 1892, and ample proof is given that the seals that are severely hit, and yet not secured, are comparatively few.

130. A remarkable point never touched upon is that, if so many seals are mortally wounded, no mention has been made of their bodies being found floating. In the case of the hair-seals in the Atlantic, which are known to sink far more rapidly than the fur-seal, the taking of carcasses of seals killed, but not secured, by other hunters, is a matter of very frequent and usual occurrence.

131. It is also acknowledged (p.) that the increase of pelagic sealing has caused the seals to become wilder and more and more difficult of approach (p. 196). Experiments made in 1892 on British men-of-war indicate that it is practically impossible now to get within shot of a waking seal. Again, sealing is only possible on

comparatively smooth days, and thus the automatic check of frequent rough weather checks this method of taking seal. Moreover, the vessels and the boats tend to get in one another's way. Thus it is that the increase of the sealing fleet does not proportionately increase the number of seals taken.

132. Allusion has already been made to the methods and times of selection by which the furriers in London classify their skins, and (? fresh proof) proof is given that the classification is by kind and quality of skin rather than by place of origin.

133. Much effort is made to prove the great percentage of females taken by pelagic sealers. But in all other animals at all under the control of men a large proportion, often exceeding one-half of the total number killed each year, are females, and the herd increases in numbers.

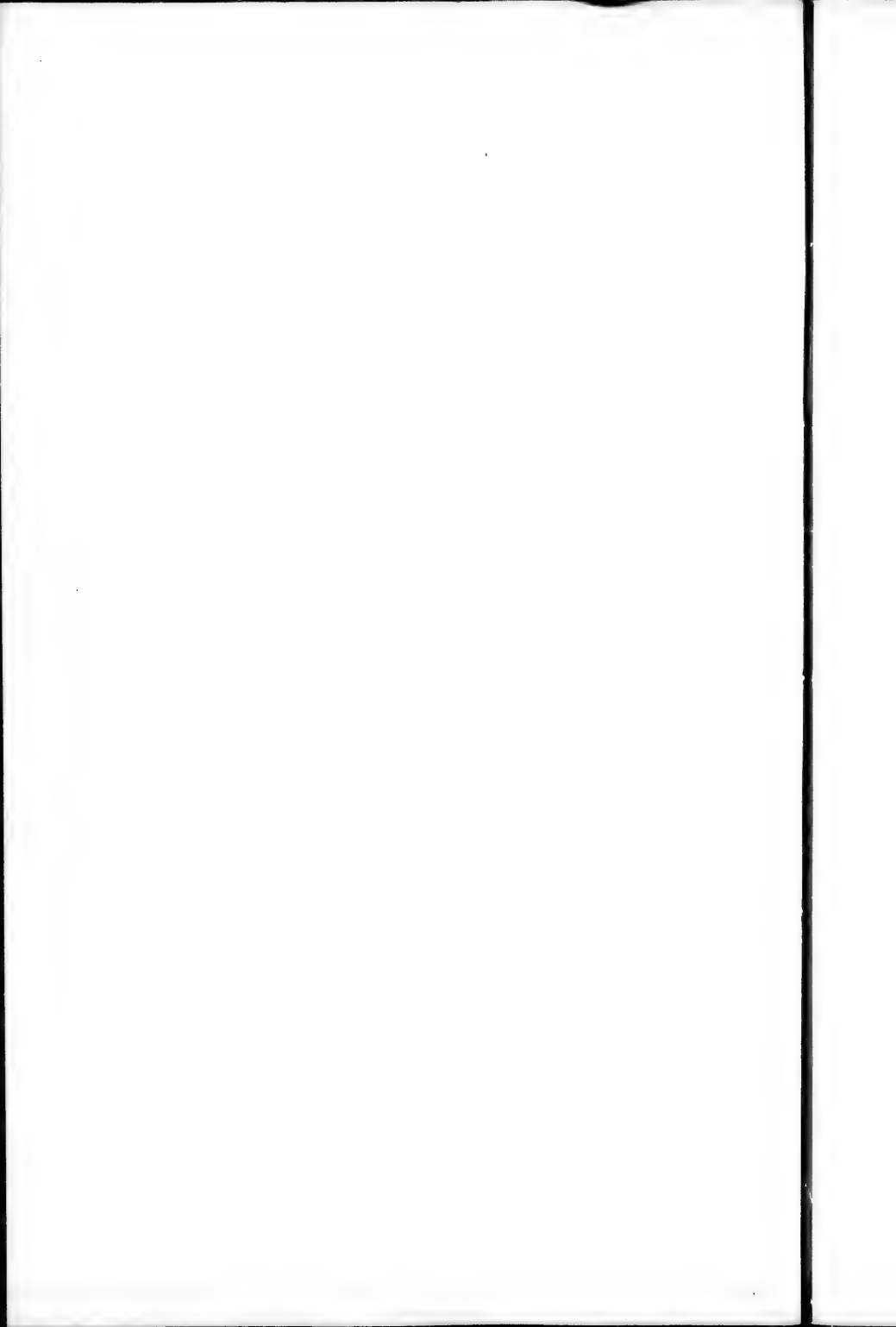
134. The important point in regard to the pups, and up to which all the United States' arguments lead, is that a large and increasing number of dead pups are found on the rookeries of the Pribyloff Islands, and that this is entirely due to the slaughter of the nursing mothers by the pelagic sealers.

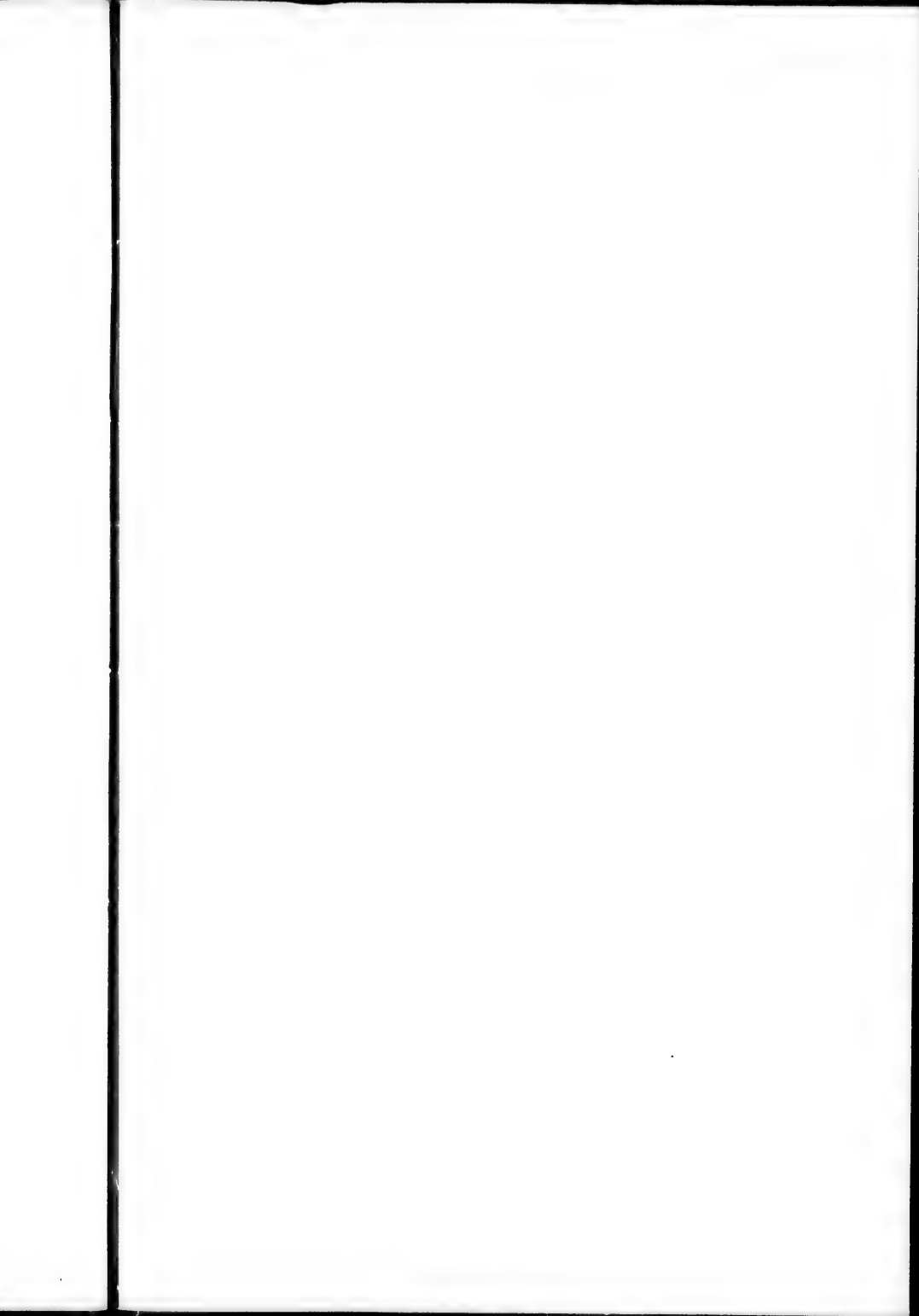
135. In the United States' Case there is no statement whatever as to the dates, localities, and other important details in connection with these dead pups, nor is any evidence offered except the *ex post facto* statement by officials of more or less vague recollections. In short, the Case of the United States on this point is made entirely to depend upon affidavits made and drawn up in 1892, which became strangely explicit as to the precise numbers of dead pups in a long series of years, making out that they tally exactly with the numbers of females taken by the pelagic hunters.

136. But the Tribunal will necessarily enter into this question in greater detail. They will call for proof that the asserted cause could have been the cause, was the cause, and was the only possible cause.

137. It is to be remarked that no official notice whatever was taken of dead pups until the attention of the authorities on the islands was drawn to the fact by the British Commissioners in August 1891. No official records exist of any such facts.

138. It is true that the United States put for-





ward a Memorandum by Professor J. A. Allen (vol. ii, p. 405). On this supposed effect of pelagic sealing he writes:—

"Dead pups at the Pribyloff rookeries were of rare occurrence prior to pelagic sealing in Behring Sea, being too infrequent to attract attention. . . . Soon after pelagic sealing began dead pups became so numerous as to attract general attention, . . . their extreme emaciation clearly indicating death from starvation."

139. The facts as to the finding of the pups in 1891 are set out in the British Commissioners' Report as follows (p. 61):—

"When visiting Tolstoi rookery on the 29th July, we observed and called attention to several hundred dead pups. . . . Neither the Government Agent who was with us nor the natives forming our boat's crew at the time would at first believe that the objects seen on the rookery were dead pups, affirming that they were stones."

140. In the United States' testimony this account is fully corroborated by the affidavit of Colonel Barnes (vol. ii, p. 101).

141. Colonel Murray has given as the reason why the dead pups were never noticed before that never until the investigations conducted in 1891 were any visits whatever paid to the rookeries, especially after the close of the killing season towards the end of July.

142. The explanations given to the British Commissioners immediately they brought the fact of the dead pups to the notice of the authorities were as follows:—

On the 30th July Mr. Redpath said they had probably been trampled to death by a stampede from above. On the 2nd August Mr. Webster suggested a heavy gale, because many years before, after a heavy gale, "the beach was strewn with dead pups" on North-East Point.

143. Certain facts as to these dead seals are to be noted:—

(a.) The pups in 1891 were found dead and decayed on the 29th July, and must have been fourteen days dead.

(b.) Generally the pups were found dead over definite and often very limited areas, in groups or patches.

(c.) The pups in any one place had evidently all died about the same date.

(d.) The great majority were found dead close to the sea margin (see vol. ii, p.).

144. The pups seen in such numbers on Tolstoi rookery on the 29th July had been dead at least fourteen days. It is acknowledged that a seal pup does not need to suckle for several days, the cows have been known to be absent a week. Wherefore, had these pups died because of the deaths of their mothers, these must have been taken about the 11th July.

145. It is confidently assumed in the United States' Case that if ever a cow "in milk" is taken it necessarily involves the death of a pup by starvation. But in his evidence a boat-steerer states (p. 350) that—

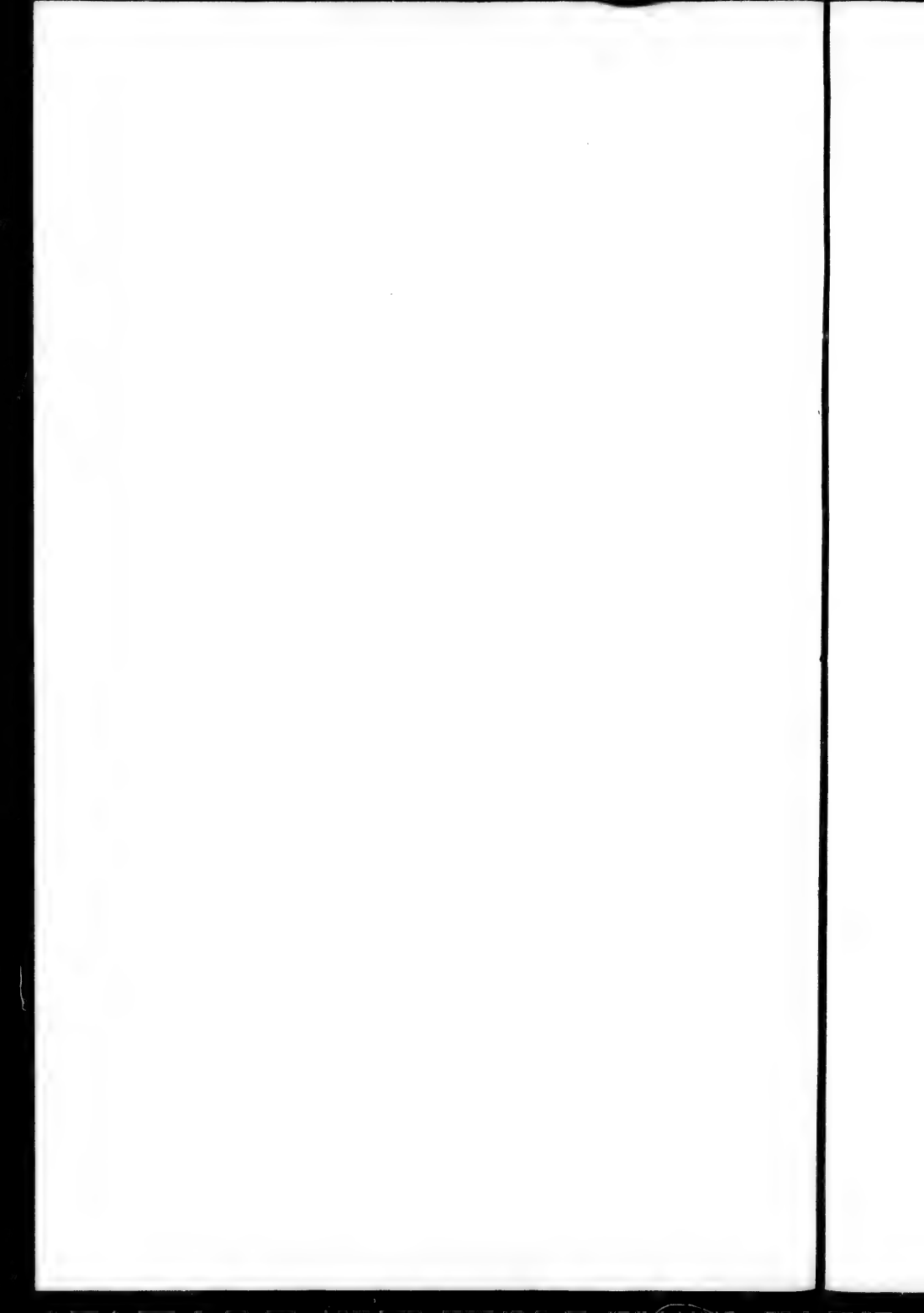
"In February 1892 . . . we commenced sealing as soon as we got outside the Cape [?], and captured about 270 seals up along the coast. Most of the seals caught were pregnant females, and when we would skin them the milk would run out of them on deck."

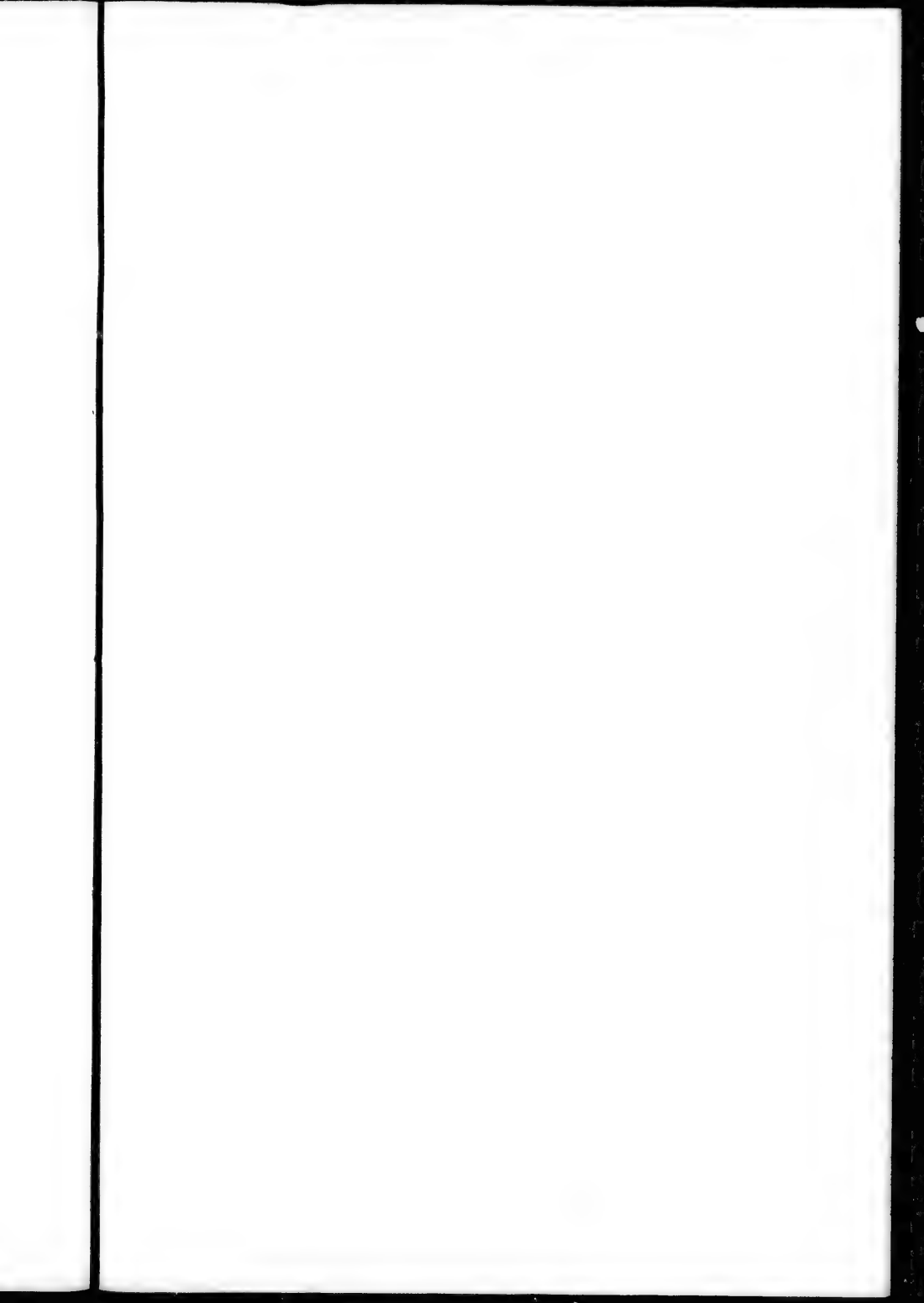
These cows "in milk" had no pups on shore to die of starvation. Again, cows in milk are obtained (vol. ii, pp. 321, 337, and 348), very late in the season, in the last days of August in the Unimak, the 172nd, and the Akutan Passes, and these cows were evidently "travelling" south, and not about to return to any pups on the Pribyloff Islands.

146. It is probable that seal pups, like the young of all other animals, will suckle, if permitted, far beyond the period when they could gain their own food, and that thus some seals are seen to suckle so long as they remain on the islands. Certainly pups killed in November have been always found to be full of milk. But as was pointed out by Mr. Webster, this was in spite of the fact that the cows had left the islands. Late in October and early in November large pods of pups remain on the islands, but comparatively few mothers, and certainly not mothers for every pup.

147. The analogy of the hair-seal is apposite. They are weaned at from twelve to fifteen days after birth, and they are then plump and full of "cream," but they spontaneously remain on the ice for some time after, taking no food whatever, and gradually consuming the cream and their own fat, until, when they have become quite lean, they take to the water to seek food.

148. It has already been shown that the cows remain within the harems with their pups for, perhaps, four weeks after birth. The cows after





this commence to frequent the water, but the absence of any excrement, and the fact that the waters along the rookery fronts teem at this period with cows simply sporting in the water, and that cod and other fish are quite common in the immediate neighbourhood, tend to show that the cow does not as yet seek food when in the water. Indeed, it seems certain that the cow, while actually nursing her pup, does not leave the immediate neighbourhood of the rookery, and that she remains in attendance from six to eight weeks, during which time, like the bulls and all other classes of seals, she abstains from food. In corroboration of this is the general opinion of all natives, who say that the cows do not seek food at this season. The British Commissioners report that, in the case of two cows, driven direct from the Cape Yushin rookery, together with bulls and pups, and killed then and there on the 6th September, 1891, no traces of food were found in any of the stomachs.

149. It would then appear to be certain that the cows with pups do not leave the rookeries, or their immediate neighbourhood, and do not make excursions to seek food until six or eight weeks after the birth of the pup, and by then it is probable that the pup, if it became necessary, could maintain itself, or at all events would not need fresh nourishment until such time came as it could and would make its way to the water.

150. It is certain, however, that for a variety of reasons cows would give over nursing, and then very probably start for the deep sea to rest and refresh before entering on the autumnal migration. Among such reasons would be the loss of the pup, whether in a stampede or by bulls fighting, or by its feeling itself weaned, or by its wandering away. The marked absence of affection for its offspring noticeable in the seal has already been stated, and it is quite possible that the cows may desert sickly pups. There is also the evil effect of over-driving, which both weakens and scares seals, and may well give cows so severe a fright that they seek safety in flight. Treasury Agent Elliott, in his Report for 1890, speaks of the severe strain over-driving has been in recent years, and especially on the female seals.

151. It will be observed, however, that many witnesses speak of the emaciated condition of the pup seals. Such a result could hardly be other-

wise than looked for, if consideration is given to the anomalous condition of the rookeries in these latter days. Apart from the old natural dangers of storms and surf and killer-whales, the perpetual driving and re-driving scare and physically injure a certain, probably a large, proportion of the seals, and as the drives are now made close along the rookeries, not only are females more commonly driven up, but stampedes are frequent. Again, the bulls have very much larger harems, and the service will in many cases not be so effective.

152. In the testimony put forward by the United States, there occur very many allusions to these dead pups. In the great majority of cases the remark is made that the increase is coincident with that of pelagic sealing.

153. Mr. Lord, for instance, says (p. 38) :—

"In 1886 I saw a large number of dead pups lying about . . . I account for this by the killing of the mothers by the open sea sealers before the pups were weaned."

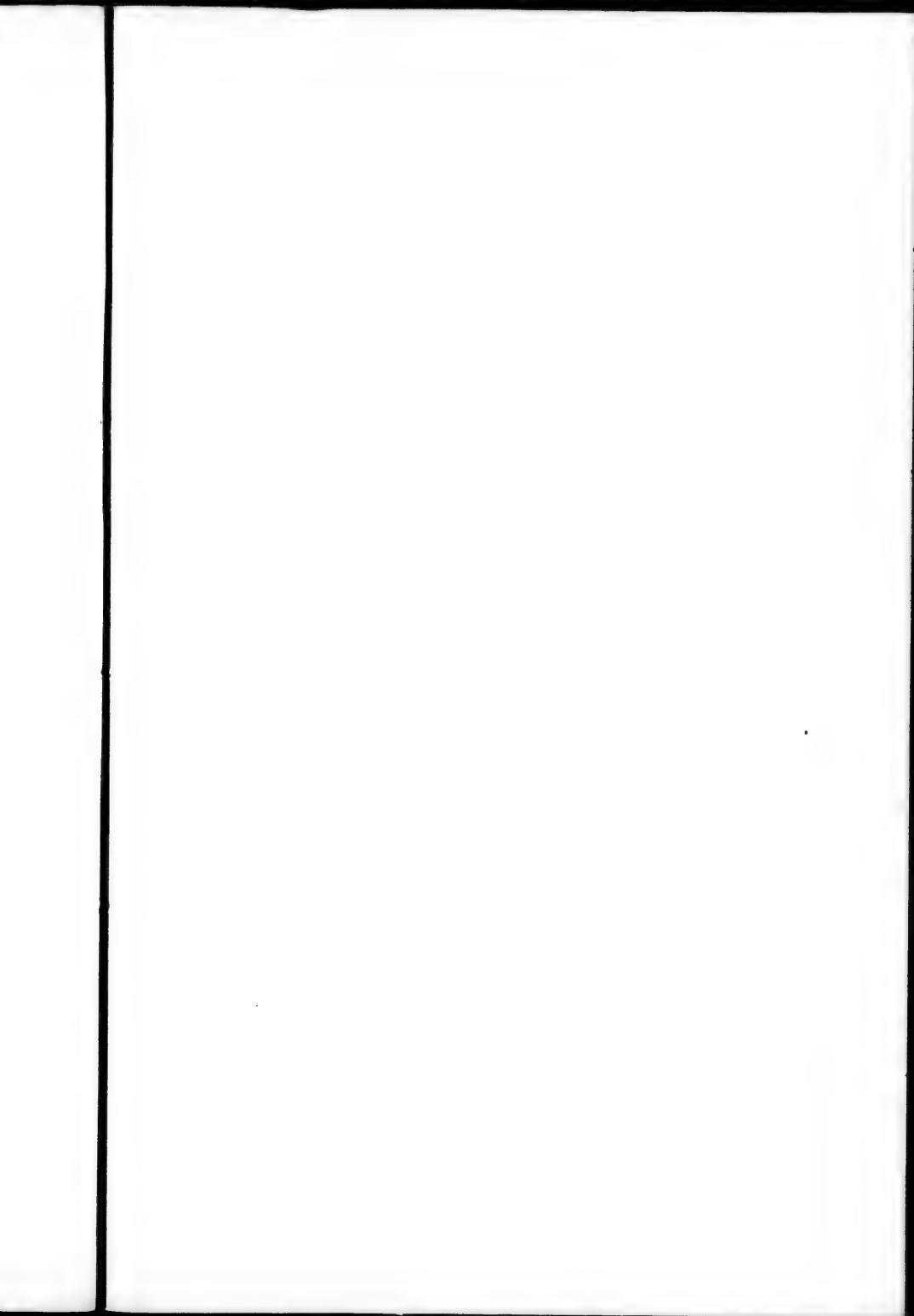
But in no case does any record appear to have been made at the time, or any report whatever sent in at the time to the Treasury or the Company.

154. The estimates for the number seen in 1891 range from 20,000 to 30,000 dead pups, and the new feature is accounted for by Mr. Fratis, employé of the lessees, who states (p. 108) :—

"I began to see more and more dead pups on the rookeries until, in 1891, the fleet of sealing-schooners numbered more than 100, and the rookeries were covered with dead pups."

155. Taking this year, 1891, the total pelagic catch as given in the Report of the United States' Commissioners is 62,500. Of this total, the Custom-house records show that ,000 were secured outside Behring Sea in the spring. Of the remainder, at least ,000 were taken in Asiatic waters, leaving ,000 only taken in Behring Sea.

Moreover, the British schooners were warned under the *modus vivendi* of that year, and either did not enter Behring Sea or returned to Victoria before the end of July. It is well ascertained for that year that the actual Behring Sea catch was but small.



156. Again, the dead pups found in 1891 on Tolstoi and Lukannon and Gorbatch were all killed in July, most of them probably in the first or second week in July, at a time when the mothers for the most part were still in the harems, and before the rookeries had become disorganized.

157. The final fact remains that, on the same rookeries in 1892, yet more dead pups have been found and photographed both by Mr. Macoun and Professor Evermann. It was noticed that in the various places where found all the pups were in the same stage of decomposition, and met their deaths about the same date. Antoine, a well-known native on St. Paul, said in 1892:—

"There are more of them this year than last; more than I have ever seen before."

[Further evidence for 1892 coming from Canada.]

158. But in 1892 there has been practically no pelagic sealing anywhere near the Pribyloff Islands.

[See new evidence, gathered in 1892.]

159. No further proof can be needed to show that several causes may have and did contribute to causing the deaths of the pups on the rookeries, but that the killing of nursing mothers by pelagic sealers is at most merely a contributory cause, and that the main causes may be enumerated as follows:—

1. Stampedes.
2. Bulls fighting.
3. Raids along the rookery fronts, causing stampedes, as well as killing nursing mothers.
4. Surf along the shore.
5. Desertion by mothers through scare, over-driving, or sickness.

Protection and Preservation (pp. 219 to 2).

160. This portion of the United States' Case Page 218. opens with the remarkable assertion that—

"the indiscriminate slaughter of seals in the waters of the Pacific Ocean cannot fail to produce a result similar to that observed in the Southern Hemisphere, where the fur-seals have become . . . practically extinct.

The inference here sought to be drawn is that pelagic sealing, similar to that of the North Pacific Ocean, brought about extinction of the fur-seal in the Southern Hemisphere.

161. As a matter of fact, the extinction of the Southern fur-seal was brought about entirely by excessive slaughter on the breeding-places; no seals were ever taken away at sea.

It was the continuous unremitting slaughter on or close to the breeding islands which brought about the extermination, and that alone. It was then found that the continued killing and consequent continued disturbance of the rookeries scared away to other resorts all the seals which were not entirely killed.

162. On pp. 221 to 229 of the United States' Case measures of protection are cited as set up in various British Colonies, and quite truly is it stated that—

"wherever fur-seals breed in territory over which Great Britain has control, the species has received particular protection from indiscriminate slaughter."

163. There is one significant omission, however, in this connection. The New Zealand legislation quoted on p. 223 is made to cover a large area of ocean. As a matter of fact which should have been cited, the Act is made to refer specially only to *lands* within that area.

164. Another significant omission is of the fact that all legislative enactments of the kind which extend outside territorial waters apply only to British subjects and British vessels. When the enactments were made to carry out the international arrangement made in regard to the Jan Mayen seal fisheries, the United States declined to join on the plea of having no direct interest in these fisheries.

165. None of the States mentioned have protected fur-seal outside the ordinary limit of 1 marine league except by legislation affecting only their own subjects.

166. Thus the assertion on p. 229:—

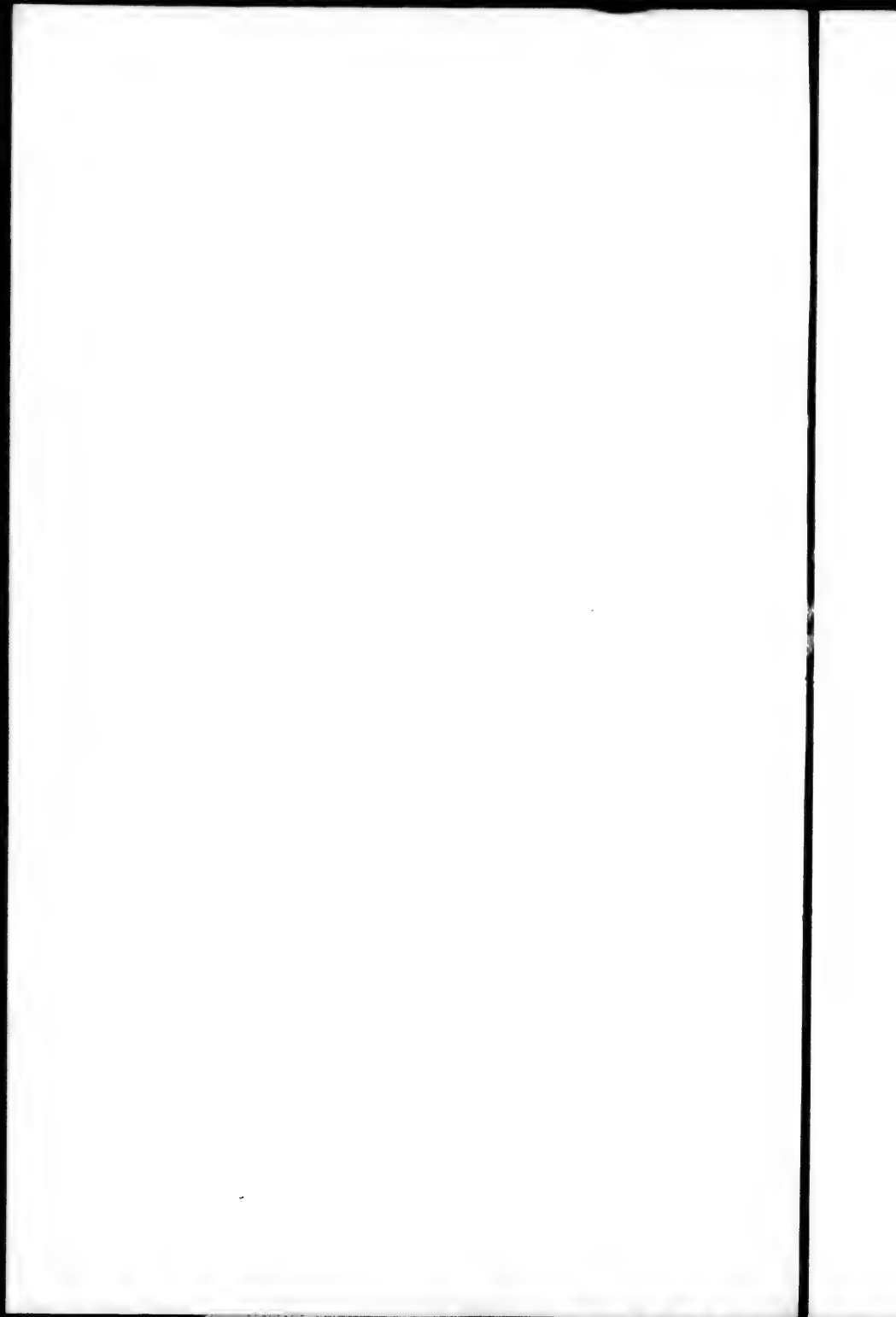
"Various nations have deemed it necessary to adopt stringent regulations, not only in waters adjacent to, but also at great distances from, their respective land boundaries"—

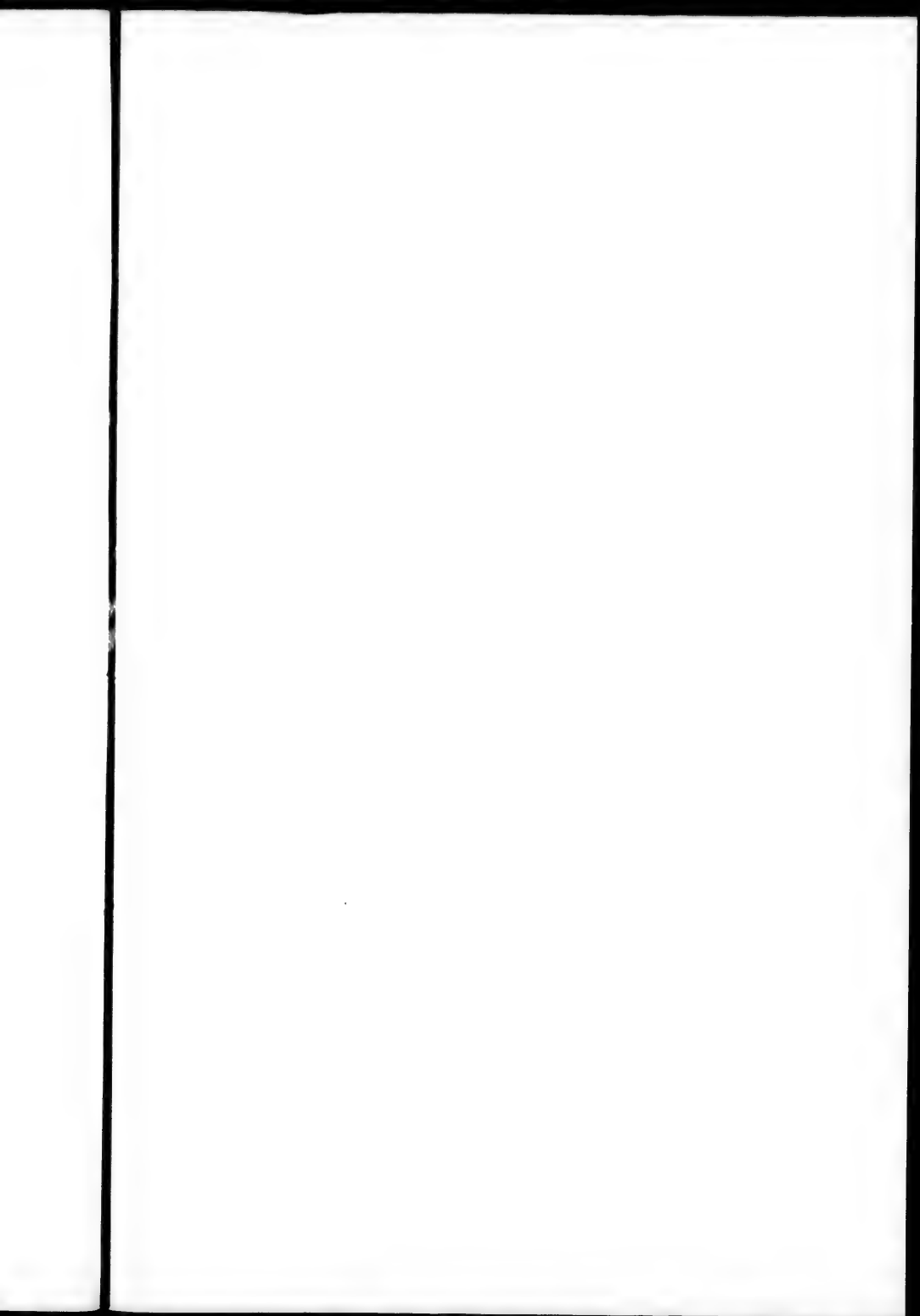
is absolutely without foundation unless there is added—

"by means of international agreement," or "over their own vessels and subjects."

167. The statement on p. 230 that—

"all nations and races in all ages have recognized the necessity of affording sufficient protection for the repro-





duction and continued existence of all animal life useful to human beings"—

is true of most nations, with the notable exception of the United States. The extermination of the buffalo because it was of use to the Red Indians is a notorious instance of extermination.

168. In no country has the protection of *feræ naturæ* useful to man been prosecuted for so long or with such success as in Great Britain.

169. Deal with the *Fishing Acts*, pp. 231-237.

[For Counsel.]

170. Thus, the statement on p. 237 that it is an established principle that any nation having a peculiar interest in the continued existence of animal life on the high seas may adopt such measures as are essential to its preservation, without limit as to the distance from land at which such measures may be enforced, is seen to be absolutely unfounded and without any warranty whatever.

171. The further contention that—

"the Alaskan seal herd stands almost alone in being denied protection"—

is equally without foundation, seeing that ever since attention was first directed to that "herd" the British Government has persistently expressed and acted up to its decision to see those seals efficiently protected. Indeed, the details given in the pages (232-249) which follow, conclusively prove this strange assertion to be absolutely without foundation.

172. The communications from naturalists have already been dealt with, but notice must be taken of the quotation on p. 240, presumably indicating Professor Huxley's opinion. The quotation is:—

"That the best course would be to prohibit the taking of fur-seals anywhere except on the Pribyloff Islands."

But there is the very significant omission of the words which follow in Professor Huxley's letter (vol. i, p. 412):—

"It is quite clear that this ideal arrangement is impracticable"—

words which can scarcely be omitted if Professor Huxley's real opinion is to be made known.

173. Dr. Merriam's Circular letter to naturalists is an *ex parte* statement, on which some, but not all, have given their opinions. Professors Huxley

and Salvadori precisely agree with the British Commissioners' recommendations, and others merely content themselves by saying that protective measures should be taken, and must be international in character.

The furriers and buyers of skins all ask for regulation of the pelagic industry. Great Britain also suggests regulations in the interests of that industry.

174. The remarkable statement is made on p. 250:—

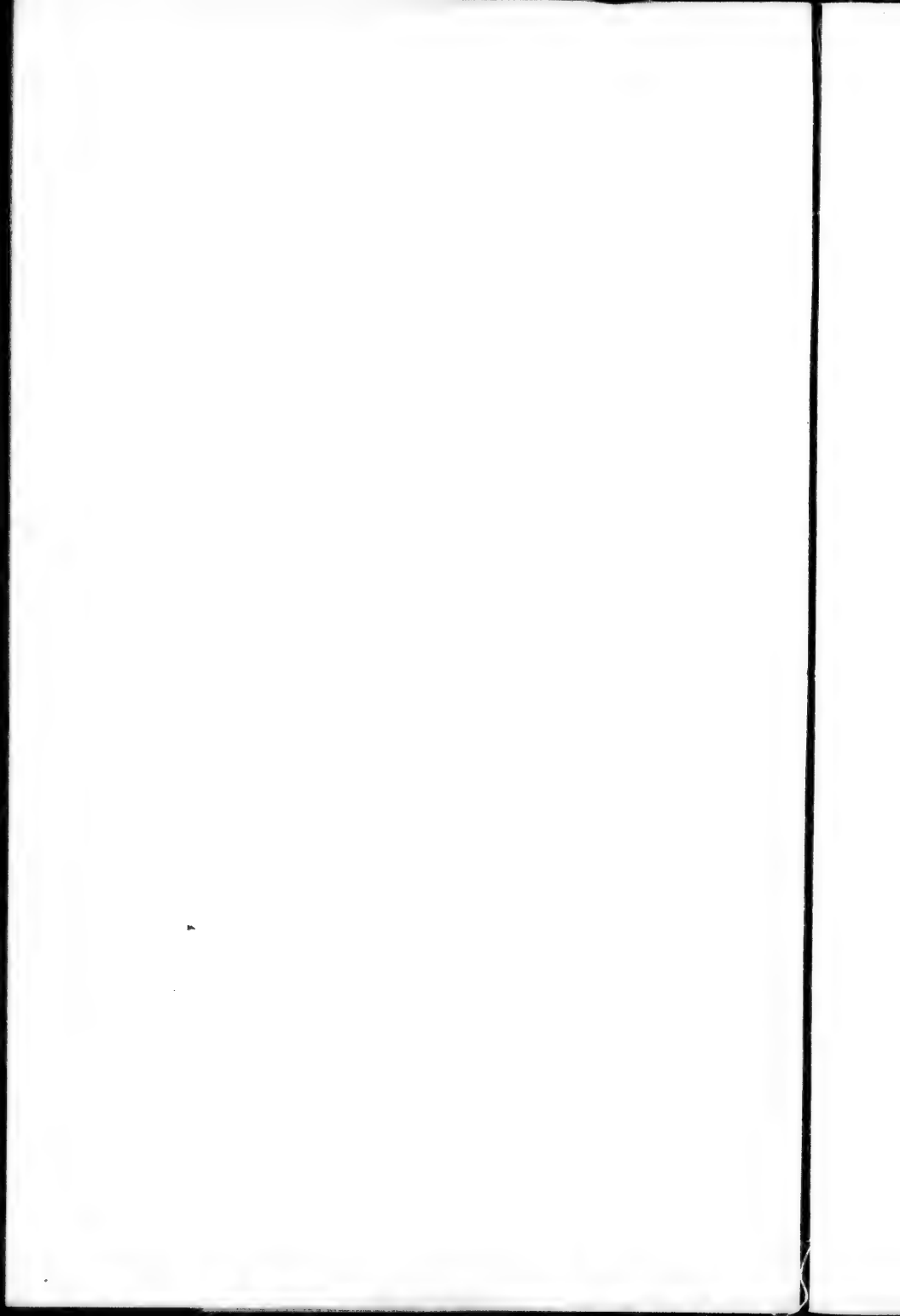
"Naturally the majority of those whose interests would be affected by an absolute prohibition of open sea sealing . . . will be found affirming the need of limited prohibition."

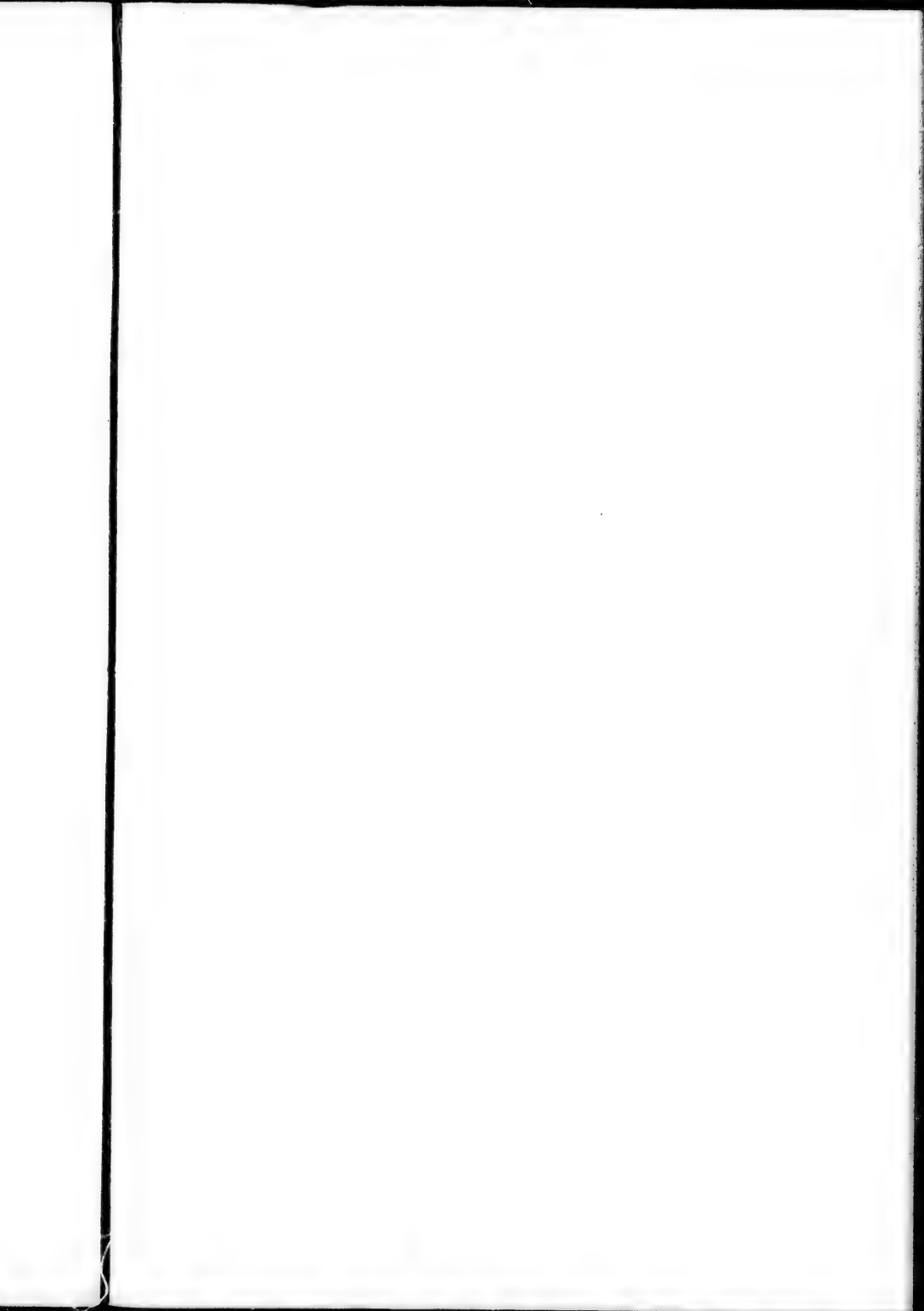
It is not explained why those interested in and deriving profit from pelagic sealing, whether American citizens or British subjects, are quietly to surrender all to others, or, as Professor Huxley writes:—

175. On p. 253 the alternatives to total prohibition are set out as four separate remedies: they are dealt with and discarded as being each insufficient in itself. No notice whatever is taken of the obvious alternative of combining all these remedies in one practical scheme, which would provide a practical and sufficient control.

176. As is set out in the Report of the British Commissioners, each of these measures can be made effective in its own province. Thus, a close season can be made to stay the taking of gravid females. The prohibition of fire-arms would prevent searing and loss of seals after being hit. The question of closing an area of sea to sealing-vessels—whatever the size of the area or zone—around the islands must infallibly, in its degree, limit the total catch by the schooners, and save the killing of mothers actually nursing their young.

177. The contention advanced by many autho-





rities that practically to protect the fur-seal measures must extend over the whole of the North Pacific is without doubt correct. But the whole of the North Pacific includes the Pribyloff Islands. That these measures should exterminate one branch of the industry is not to be thought of, and could not be agreed to by any of the nations interested in that branch.

178. The establishment of a protected area or zone around the islands would without doubt enable cruizers, with far greater ease, to check raiding on shore, and would also enable them to seize vessels sealing anywhere along the rookery fronts. The waters are so shallow that vessels habitually anchor with a kedge and warp in calm weather, and when seized they could be so anchored even in thick fogs until their position could be ascertained. As an auxiliary measure a zone would be of the greatest service.

179. The conclusion arrived at on p. 264— Page 264.

"The result, therefore, of this consideration is that, if it is deemed necessary or expedient from a practical or commercial point of view to preserve the seals of the North Pacific and Behring Sea, pelagic sealing in every form and in all waters must be absolutely prohibited at all times"—

is *totidem verbis* the plea advanced by the Lessee Company. It calmly ignores altogether the rights and the commercial interests of all nations to take fur-seal in the open ocean. It is a conclusion for which there is no warranty in the facts and circumstances of seal life. The seals may be extirpated, as they were in the Southern Hemisphere, and as they nearly were on the Pribyloff Islands in 1806, and again in 1830, altogether in the absence of any pelagic sealing whatever. Pelagic sealing can easily be so regulated as to remove all risk of extermination or even injury by its means.

The Seal-skin Industry (pp. 264 to 285).

180. It is pointed out with great truth in the United States' Case that the commercial value of the fur-seal is the result of the work of the Alaska Commercial Company after the year 1870. Before that period, and ever since the fur-seal began to be chased for its fur, in the Page 264.

middle of last century, the chief market was in China. It was by the skilful action of C. M. Lampson and Co. that the fur of the fur-seal became an article of fashion in general use. The consequence is that prices have risen from 2 to 14 dollars the skin. But for many years past all resorts of the fur-seal have been drawn upon, and especially has there been a natural development of the sealing in the sea along the coast of North America, which has been the normal work of the resident Indians from time immemorial.

181. On p. 269 we are told—

“The destruction of the Alaskan herd means the annihilation of the seal-skin industry of the world.”

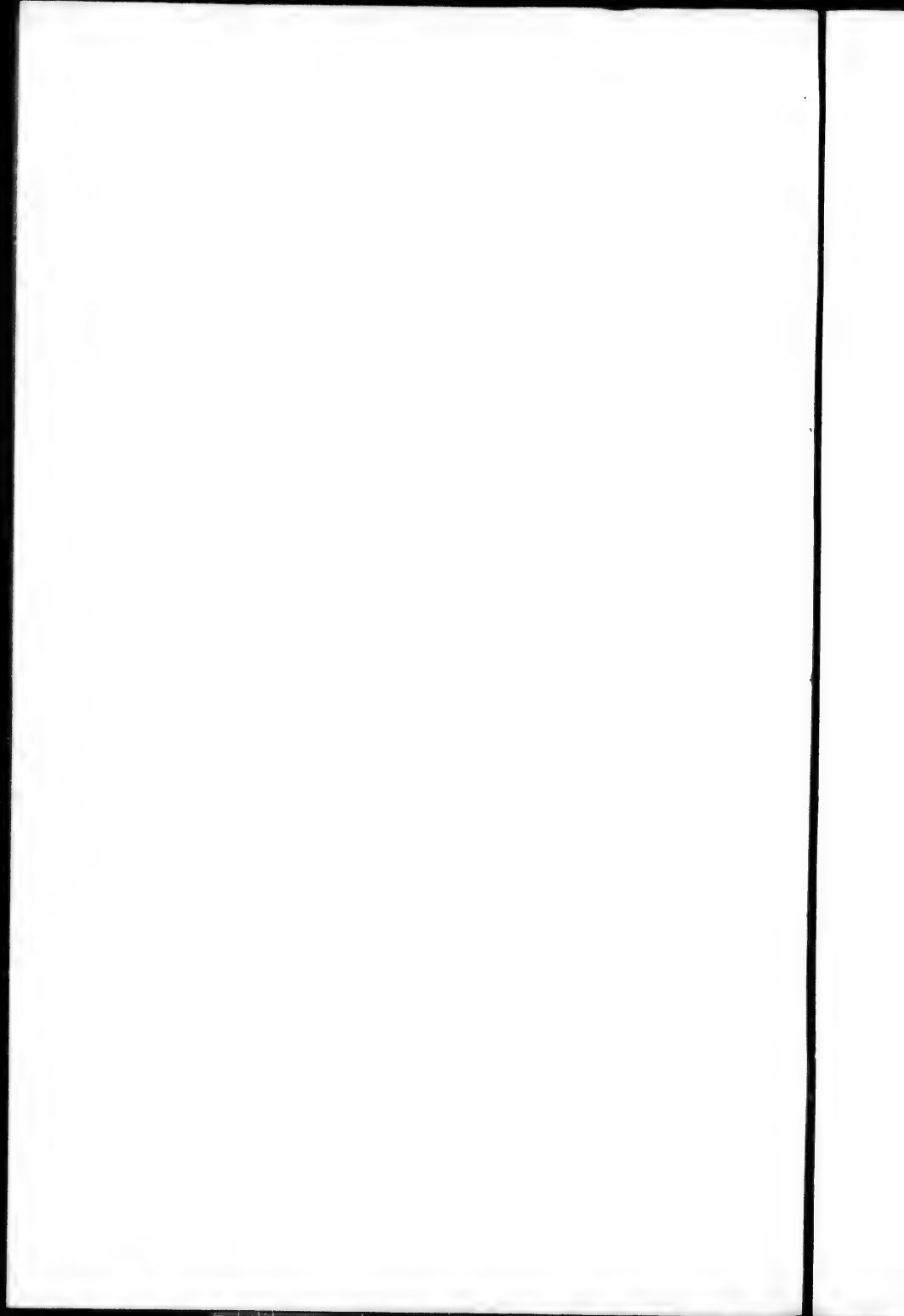
Such a result would be greatly deplored, although, as Professor Huxley says in his deposition prepared for the American Government—

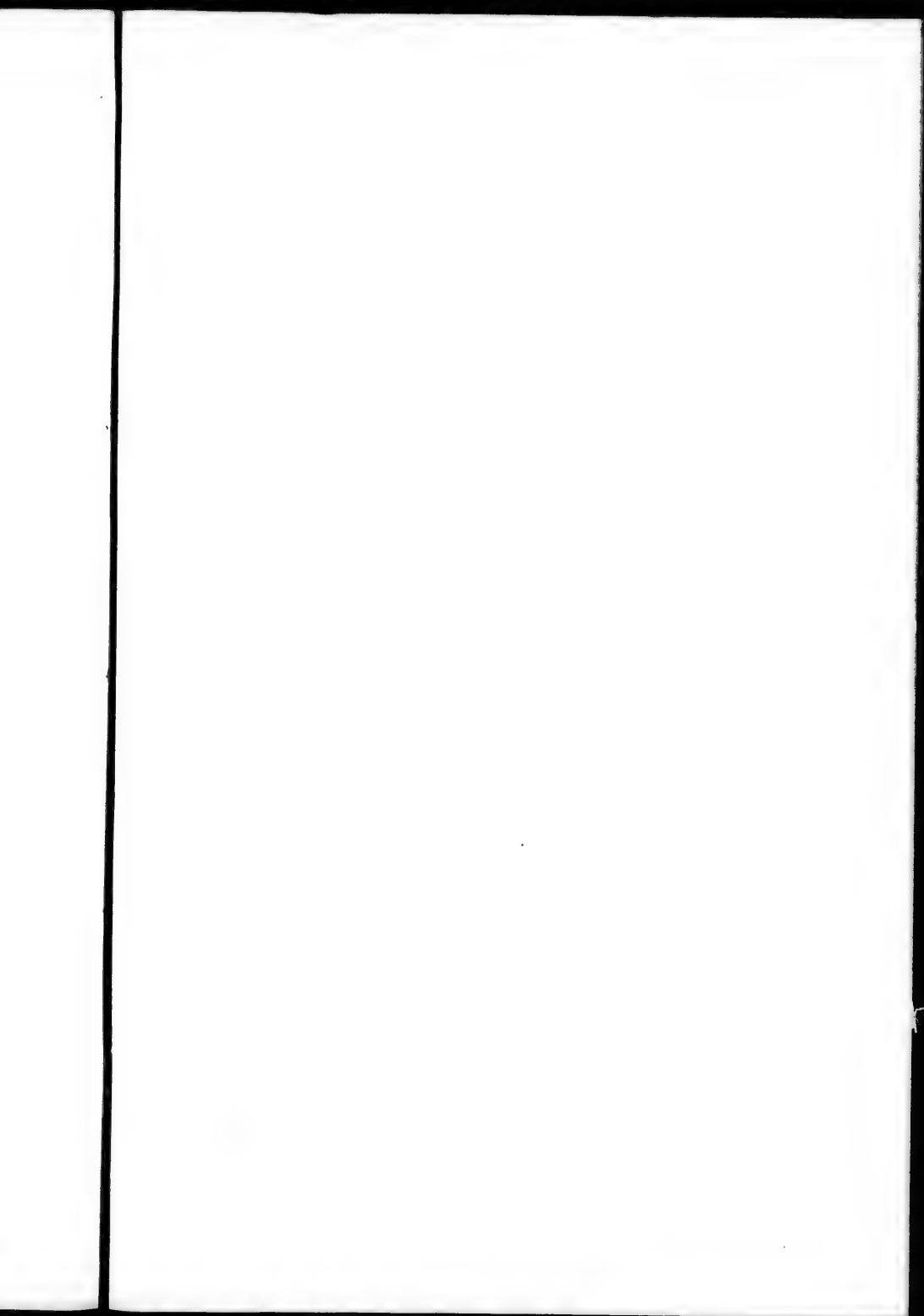
“Mankind will not suffer much if the ladies are obliged to do without seal-skin jackets; and the fraction of the English, Canadian, and American population which lives on the seal-skin industry will be no worse off than the vastly greater multitude who have had to suffer by the vagaries of fashion times out of number.”

182. At the same time it must be remembered that, according to all experience in other times and places, if the seals frequenting the Pribyloff Islands are too much disturbed and harassed and killed in their present breeding-places the survivors will for a certainty seek other shores.

183. The United States' Case is particular to point out (pp. 269- *et seq.*) the loss to the various countries should the fur-seal industry be put an end to.

184. It seems somewhat superfluous to indicate, as is done on pp. 269 and 270 in detail, that the United States' Government levies a tax, amounting in full years to 200,000*l.* per annum, on the industry in the breeding-islands, and forces American buyers of furs to contribute yet another 75,000*l.* per annum in import duties on the finished skins. In addition to this, something like 500,000*l.* is annually made by those who deal in or dress the skins in the United States. But this is purely a national affair of the United States, and has no place whatever in the discussion of rights of taking the raw material from an international or natural history point of view.





185. Scarcely more to the point is the argument (p. 271) that the present lessees of the island are put to a cost (including a tax of 9 dol. 62½ c. per skin) of 13 dol. 25 c. before their skins reach market, whereas the pelagic sealers, whether of the United States or Canada, pay no tax whatever. That is purely a fiscal and not an industrial or scientific question.

186. It is also shown that the "annual loss to Great Britain in case the herd is commercially exterminated is 940,000l." But no notice is taken of the fact that all that the industry in Great Britain asks for is a regular and full supply of skins. Where they come from or are obtained matters not to Great Britain, and if by excessive slaughter the seals were exterminated on the Pribyloff Islands no doubt supplies would be forthcoming from other old or new rookeries.

187. The loss to France by the destruction of the herd is based on the same fallacy, viz., that the excessive slaughter, and consequent dearth on the Pribyloff Islands, means the extermination of the herd everywhere, and not (as would undoubtedly be the case) its change to other breeding-grounds.

188. France (p. 273) has no need to fear any dearth in the supply of skins so long as she and other nations maintain inviolate the right of fishery on the high seas. France has shown herself properly jealous even of search of vessels by a foreign man-of-war on suspicion of being engaged in the Slave Trade—a business repugnant to and denounced by all nations. But France has always stringently upheld the free access to the high seas, and will not brook interference merely in defence of the financial interests of a private Company seeking to establish a monopoly.

189. On p. 274, the total annual loss to the civilized world by the "destruction" of this "seal herd" is estimated to amount to over 1,000,000 fr. But this and numerous similar remarks and calculations are all made on the unfounded assumption that if the Pribyloff herd were killed off it would be impossible to procure seals from anywhere else.

190. That a constant and regular supply of seal-skins should be available for the trade goes without saying (p. 275), but such a supply can well be kept up provided that mutual restrictions

are enjoined over all sources of supply of the sealskins.

191. The Tribunal will notice that not one word is said in the United States' Case in the event of pelagic sealing being annihilated, the United States would in any way pledge themselves to guarantee a continuous supply of seals from the Pribyloff Islands, or any effective limitation on the number of seals there killed.

192. Pages 275 to 285 of the United States' Case are devoted to an endeavour to depreciate the initial value of the profits and prospects of pelagic sealing.

193. We are told that many of the vessels are old; and then the industry (p. 277) is compared with—

"the British capital (1,000,000L.) invested in the seal-skin industry, which latter must be abandoned if pelagic sealing continues."

194. As a matter of fact, these respective industries may be thus tabulated:—

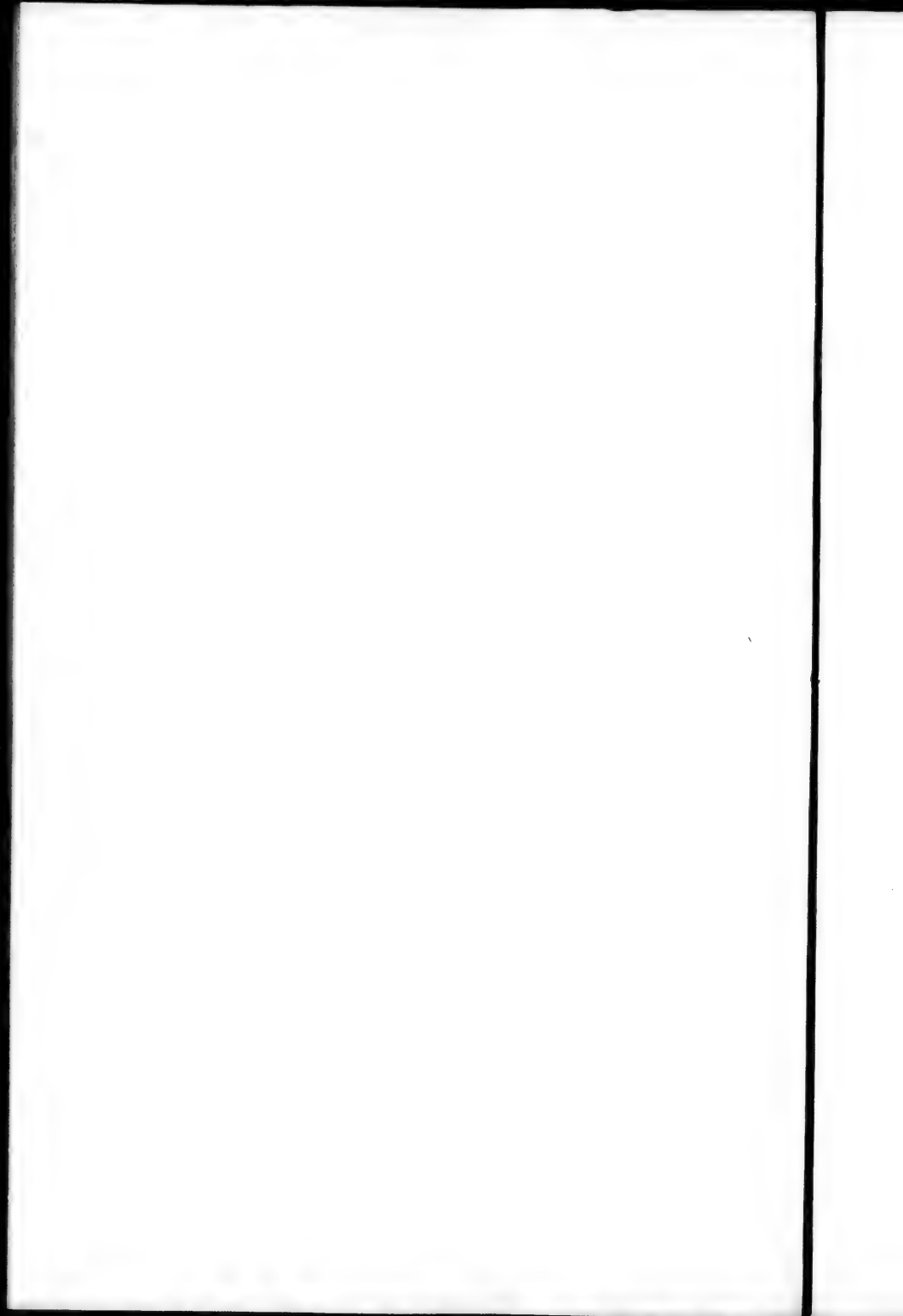
	Capital employed.	Number of Men employed.
	£	
(a.) Procuring raw material—		
Capital in use on Pribyloff Islands	120,000	310
Ditto on schooners (United States and British)	160,000	1,100
(b.) Dressing raw material and sale—		
Capital, United Kingdom	190,000	3,000
Ditto, United States	100,000	3,360

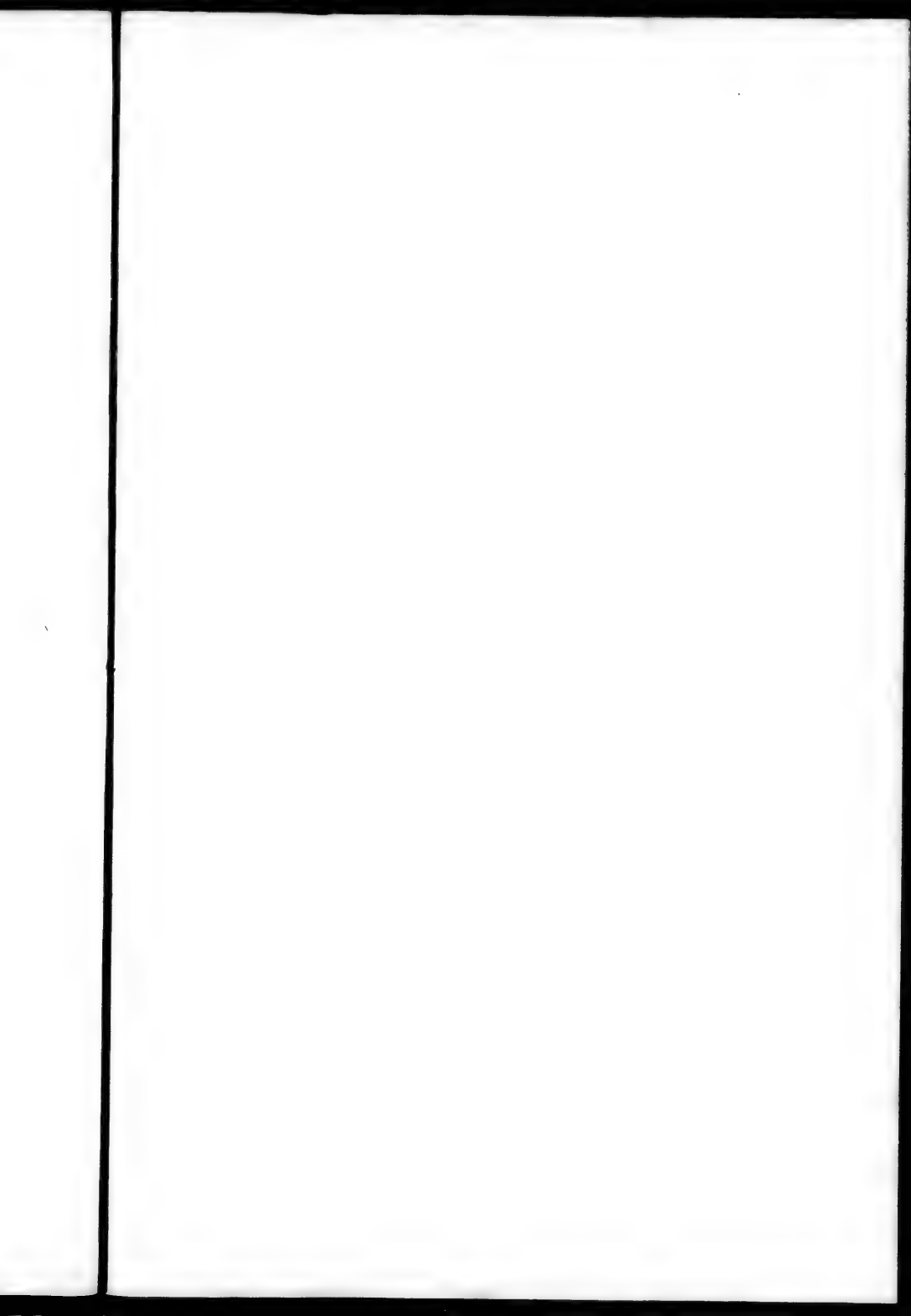
Page 281.

195. It is pointed out (p. 281) that the number of persons employed in the manufacture of seal-skins in the United States is "*over three times as many as were engaged in pelagic sealing.*" It should be added that it is twelve times as many as are employed on the Pribyloff Islands, although it is impossible to see what bearing such a statement can have on any question referred to the Tribunal.

196. The statement (p.) that the vessels, guns, and boats can be used in any other employment is equally true of the men, steamers, and houses of the Pribyloff industry, in both cases with the proviso, "if they can discover other employment."

197. The United States' Government are at
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much pains to show (pp. 282, 283) that pelagic sealing is a speculative and altogether profitless undertaking. Then follows another instance of theoretic elaboration, which again leads to curious results. The assumption is made, "*if the men were paid 30 dollars a-month on the average*"—and an elaborate calculation is raised on this purely hypothetical assumption; as a matter of fact payment is by result and per skin collected. Similar catenæ of baseless assumptions are then indulged in until it is shown that pelagic sealing does not yield any profits.

If this be so, pelagic sealing will very speedily die of inanition, for British subjects are not in the habit of continuing to work in undertakings which no longer pay.

198. On p. 284 the very remarkable and inscrutable argument is advanced that those who supply the capital for pelagic sealing belong to different classes in life; and it is added (p. 285):—

"The people who undertake this venture are as varied in their occupations as the purchasers of lottery tickets."

According to the United States' evidence, which gives an elaborate list of the occupations of persons having shares in schooners, the industry is supported by a wide section of the public. Precisely the same account can be made of the shareholders in the North American Commercial Company, not one of whom is a fur-seal hunter.

199. Thus the United States build up their plea for "*protecting and preserving the world's chief supply of fur-seal skins,*" quite oblivious of the fact that the Tribunal will deal merely with two methods of supplying a portion only of the raw material used in that great industry, and that both methods, if carried to excess, must result in the destruction of one present source of supply, but both can be so controlled and regulated as to insure a permanent continuance of the supply.

200. There is no reason why one class of producers of the raw material should surrender their industrial rights and profits (however small) in order that another competing class may pay an exorbitant tax to some one else's Government, and look for profits besides.

201. The raw material is produced and placed in market at an original cost of 3 dollars per skin.

The shore sealers have to pay, in addition, a Government tax of about 10 dollars, from which the pelagic sealers are exempt.

The right comparison is between the capital invested and wages earned in the respective branches of the industry. The capital employed on the islands does not exceed 50,000*l*. That employed in the schooners probably reaches 120,000*l*.

202. It is noteworthy that the United States' Case omits all notice of the fact that nearly one-half of the pelagic industry is carried on in United States' bottoms. In 1891, of the vessels engaged, fifty were British, and forty-two belonged to United States' citizens.

Damages claimed (pp. 286-291).

203. The United States make a statement here of damages under the *Modus Vivendi* Convention of the 18th April, 1892, whereas the reference to the Arbitrators under Article VIII of the Arbitration Convention of the 29th February, 1892, is confined to questions of fact (not of amounts) under the general claims presented for the decision of the Arbitrators.

IV.—SUMMARY OF REJOINDER OF GREAT BRITAIN.

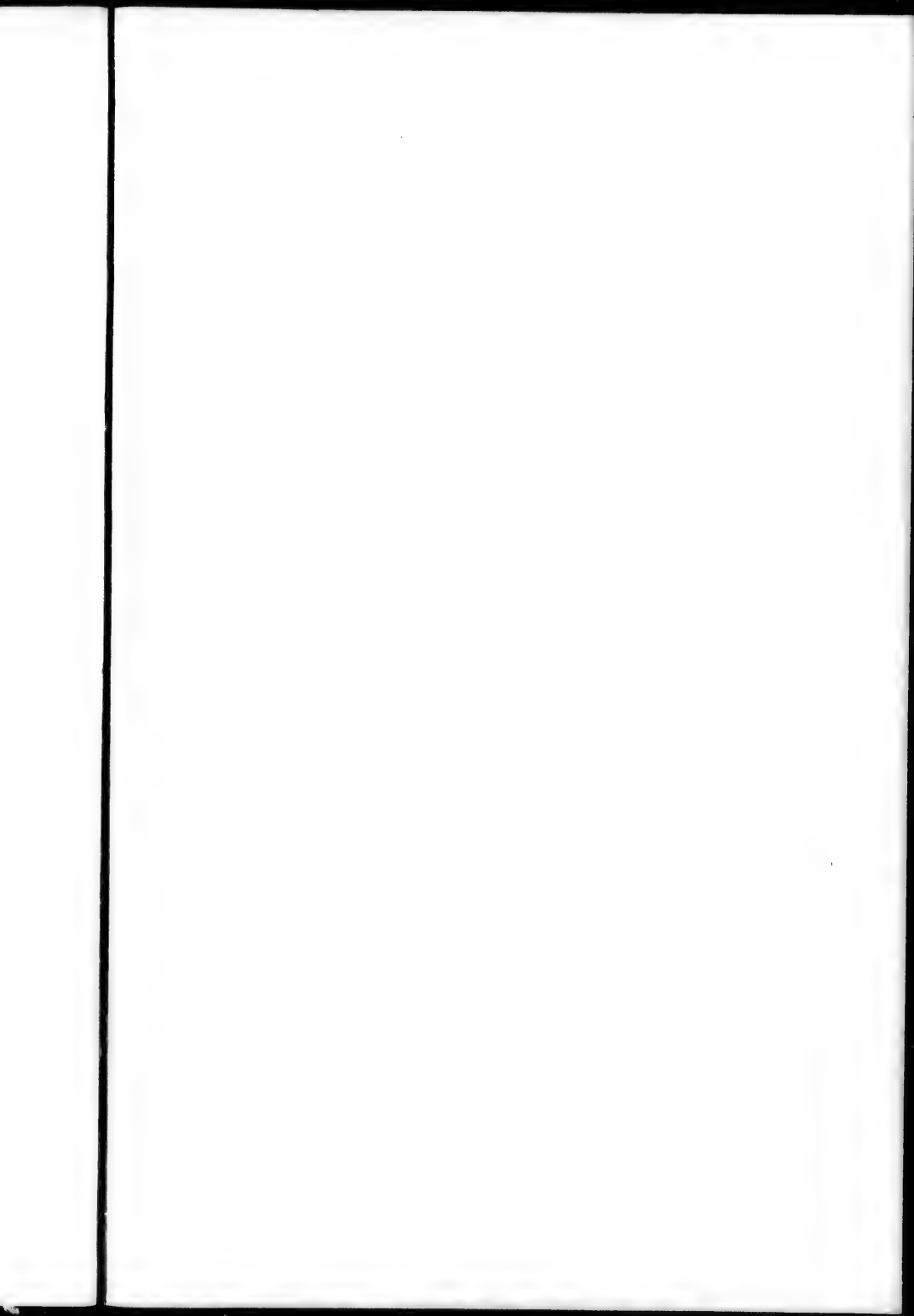
204. It will be convenient, in summing up the rejoinder by Great Britain to Part II of the United States' Case, to follow the order of the conclusions set out on pp. 295 to 303 in so far as these apply.

205. Part II (A) covers four of the nine propositions upheld by the United States (pp. 295-298); (B) is the foundation for the two questions set out on p. 299, and (C) of the four final claims put forward on pp. 300 and 301, as well as of the final prayer (D), with which the Case concludes on p. 303.

206. The four propositions (pp. 295-298) may be summarized as follows:—

1st. That the Alaska fur-seal is a domesticated product of a portion of United States' territory.

(A).—The United States' Propositions.



2nd. That its present existence is due wholly to the protection of the United States, and that the serious decrease in numbers is due wholly to pelagic sealing.

3rd. That pelagic sealing is illegitimate, improper, wasteful, and wholly destructive of the sealing industry.

9th. That the profits, if any, of pelagic sealing are out of all proportion to the destruction of the seal-skin industries in various countries.

207. In regard to the first proposition, the Page 295
 foregoing evidence and statements conclusively prove that the Alaskan fur-seal, belonging to the *Otaridea* of the family *Pinnipedia*, is essentially a pelagic animal which resorts to the land for a brief period of each year for purposes of propagation, and cannot exist without access for the remaining and greater portion of the year to the deep sea for food and for suitable climate; that it is not, and has not been, domesticated, for it cannot be herded or fed in sufficient numbers by man; that while its limbs, designed for locomotion in the water, do not enable it to escape from man on land, yet its movements at sea are uncontrolled and uncontrollable by man; that it is an animal which produces a fur at present in fashion and valuable to mankind; that the fur-seal found in the North Pacific presents no specific or generic differences, and is known to land in many widely different localities at the present day; that its course, when absent from the breeding-islands, is on the high seas, altogether outside territorial waters, and it possesses all the legal attributes of a free-swimming fish, and that at certain seasons it approaches and feeds off the coasts of British Columbia, of the United States, of the Asiatic territories of Russia, and of Japan; that no distinction can be drawn between any separate herds of these seals; that although it may be the case that those seals which at present resort at the breeding season to the Pribyloff Islands spend the winter months on the eastern side of the North Pacific, while those resorting to the Commander Islands spend the corresponding months on the western side of the same ocean (or in the vicinity of the coasts of British Columbia and Japan respectively), that the seals pertaining to these two migration-tracts are of the same kind and are not specifically distinguishable; that connection and interchange

exists between the several breeding-places, and that a similar or correlative change can be traced in regard to the condition of the rookeries from year to year on the two principal groups of breeding-islands; while seals breeding elsewhere, whether on the Kurile Islands, Robben Island, or at various isolated points to the south of Behring Sea along the coast of North America, are also identical in kind and appearance; that in the past it has been proved that the seals, if harassed and disturbed in one breeding-place, seek some other; that the identity of an individual seal can be established by marking the individual, but that it is absolutely impossible to identify the place where begotten, and that to identify by place of birth, as has been proved by actual experiments, does not prove that the seal will ever return to the same breeding-ground; that while the seal has a fixed intention to return somewhere to breed in the summer, it has an equally fixed intention to return during the longer migration, in the autumn, winter, and spring, to its regular feeding-grounds in the open sea; that the Alaska fur-seal comes under the category of *fera natura*, and while it uses at present United States', Russian, or Japanese territory for breeding purposes, it uses the high seas for feeding purposes and as its winter home.

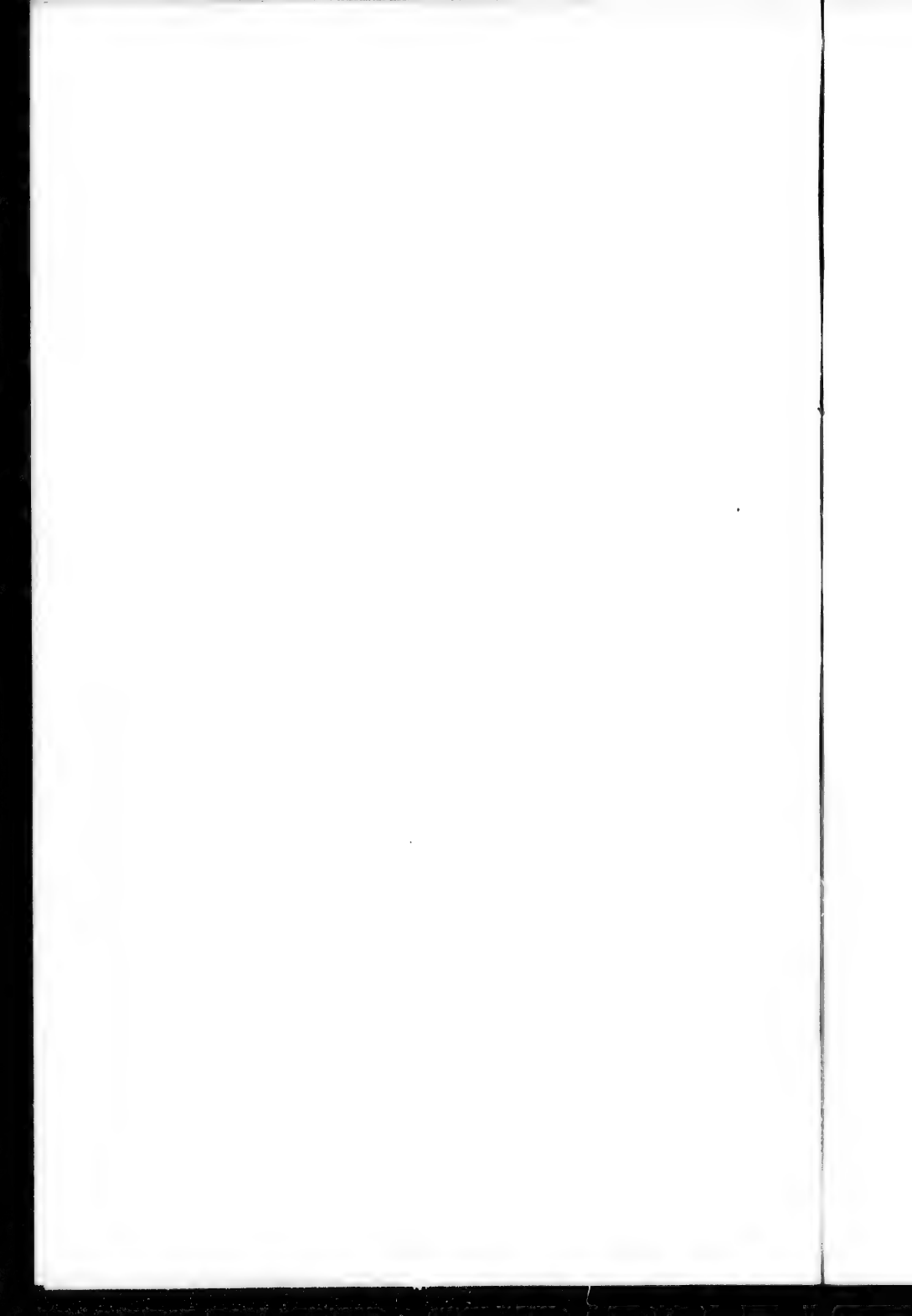
Page 296

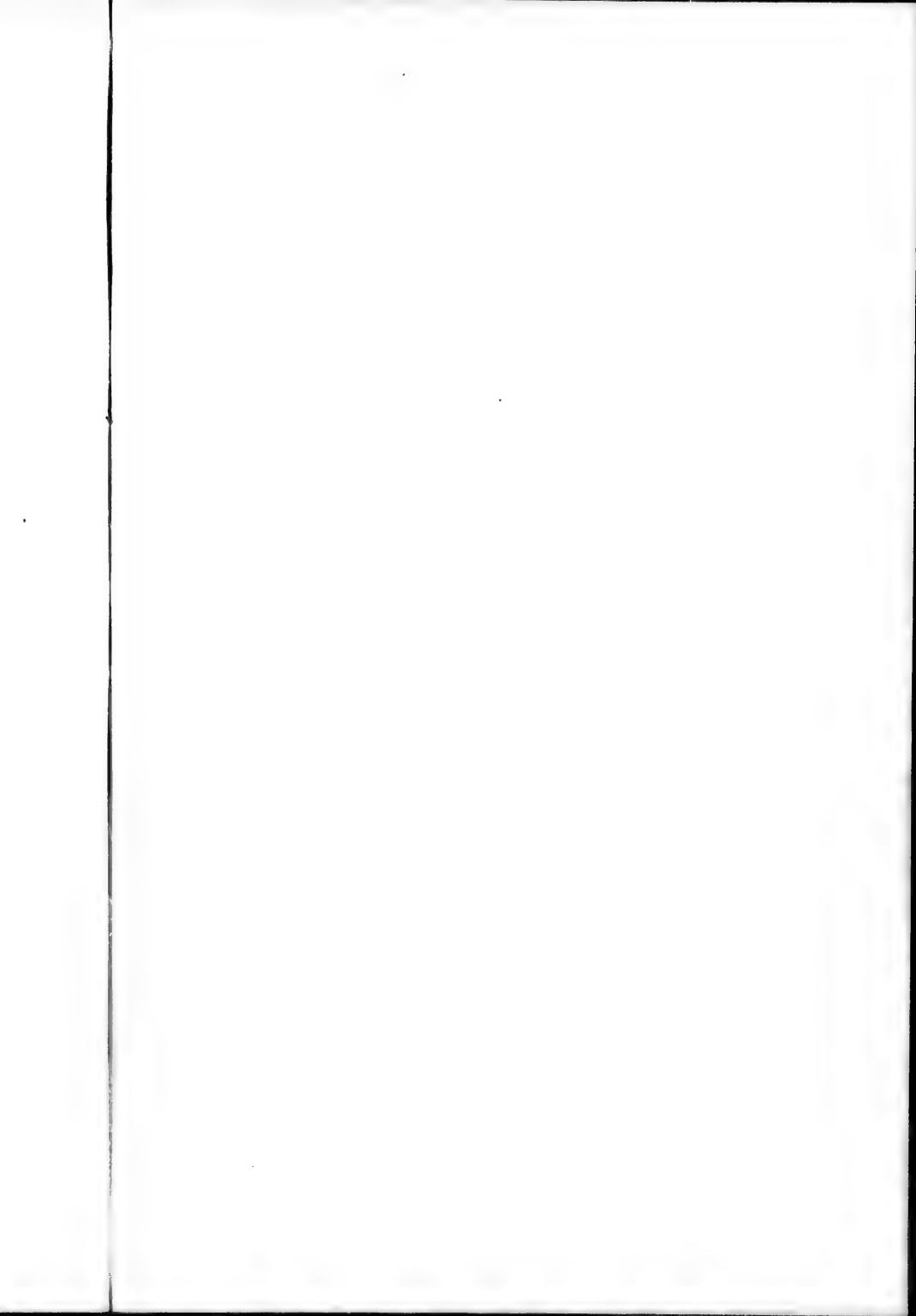
208. In regard to the *second proposition*, it is shown that, under United States' management,—

Page 309.

‘a marked diminution in number of seals on and habitually resorting to the Pribyloff Islands has taken place, that it has been cumulative in effect, and that it is the result of excessive killing by man.’

That the dates and facts of the decrease prove it to have commenced as long ago as 1880, and to have been in active and cumulative operation in 1885, and in 1889 to have already reduced to one-half the supply of killable seals available for slaughter; that the killing of seals at sea, by which, under the present system, many females are taken, was not of material importance until the years 1886 and 1887, in which years for the first time substantial numbers of seals were taken in the Behring Sea or within several hundred miles of the breeding-islands, and that in so far as this catch was in breeding females the results in the supply of killable males (1 to 6 years old) or breeding females (at least 3 years





old) on the Pribyloff Islands could not have become apparent until the years 1889 and 1890; that pelagic sealing has never been practised "with other herds," and that the one cause of the commercial extermination of the fur-seal in other places or at other times is well known to have been entirely caused by excessive and indiscriminate slaughter on shore; that on the Pribyloff Islands it had never been found practicable to take more than an average of 30,000 seals in the year until the islands passed to the United States, when the quota was at once raised to the very high limit of 100,000, and that this severe drain upon the seal life, actually averaging 104,000 a-year for twenty years, is the main and sufficient cause for the present dearth of seals, and that the additional numbers taken by the pelagic sealers will in the future be a contributory cause.

209. In regard to the *third proposition*, Page 297. it has been shown that pelagic sealing is essentially legitimate, being (1) a development of the undoubted rights of the aboriginal inhabitants of the coasts of North America, exercised by them to their great profit and advancement; and (2) an exercise of the equally undoubted rights of various nationalities to the *usus* and *fructus* of the high seas; that the barbarous, improper, and wasteful attributes of pelagic sealing have been gravely exaggerated, and can be easily abated and removed. That if conducted under sensible restrictions, which are asked for by the pelagic sealers themselves, pelagic sealing can be carried on so as to yield a steady and reliable supply of seal-skins, and aid to build up and preserve the great industry of which it is an integral portion; but that no restrictions at sea, not even the absolute prohibition of pelagic sealing, could insure the preservation of the seals unless adequate limitations are also imposed on the breeding-islands.

210. In reference to the *remaining proposition*, Page 298. the industry of pelagic sealing, if so unprofitable as there stated, will soon come to an end so far as British subjects are concerned; but in comparison with the only other industry of procuring seal-skins, viz., that of the lessees of the breeding-islands, it employs twice as much capital and provides a livelihood for 1,400 white men, and for five times as many natives as are employed on the Pribyloff Islands.

In regard to the remaining statement that the

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profits of pelagic sealing are out of all proportion to the destruction of the seal-skin industries in various countries, it has been shown that pelagic sealing, properly controlled, will not destroy the supply of seals, especially if the corresponding industry on shore is placed under equivalent limitations.

211. The two concluding questions propounded by the United States may be replied to as follows:—

In reply to the first of the two, viz., whether the United States must submit to the destruction by foreigners of one of their national industries, the reply is that the "foreigner" equally resents the destruction of his international industry by excessive slaughter on the United States' islands, but is willing to agree to mutual concessions securing the preservation to both of the industry as a whole.

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In reply to the second of these questions, viz., whether international arrangements should not be made to avert such a catastrophe, the reply is that Great Britain is and always has been quite willing to enter into the necessary international arrangements to achieve the above results.

(C)—Four final claims

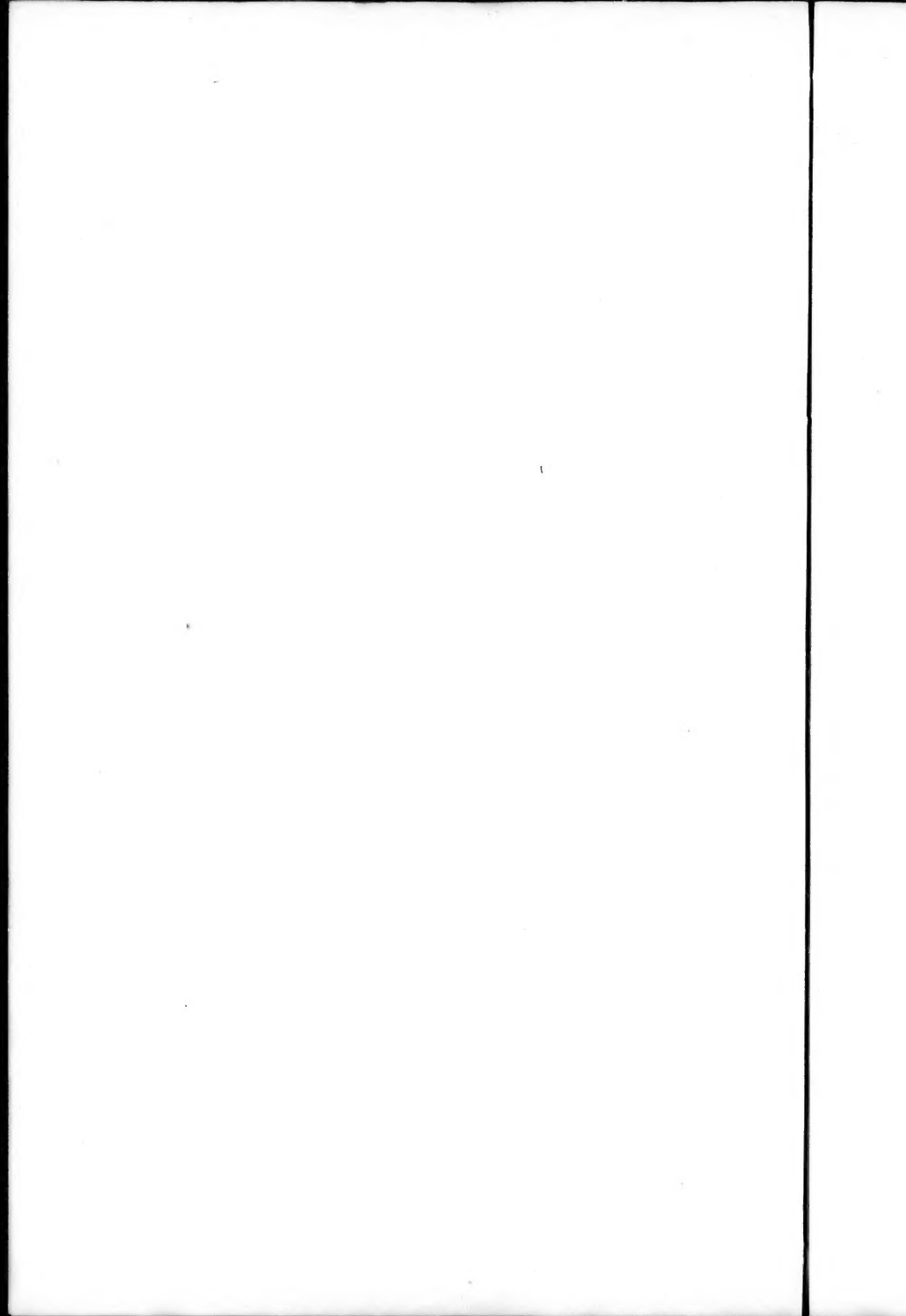
Page 300.

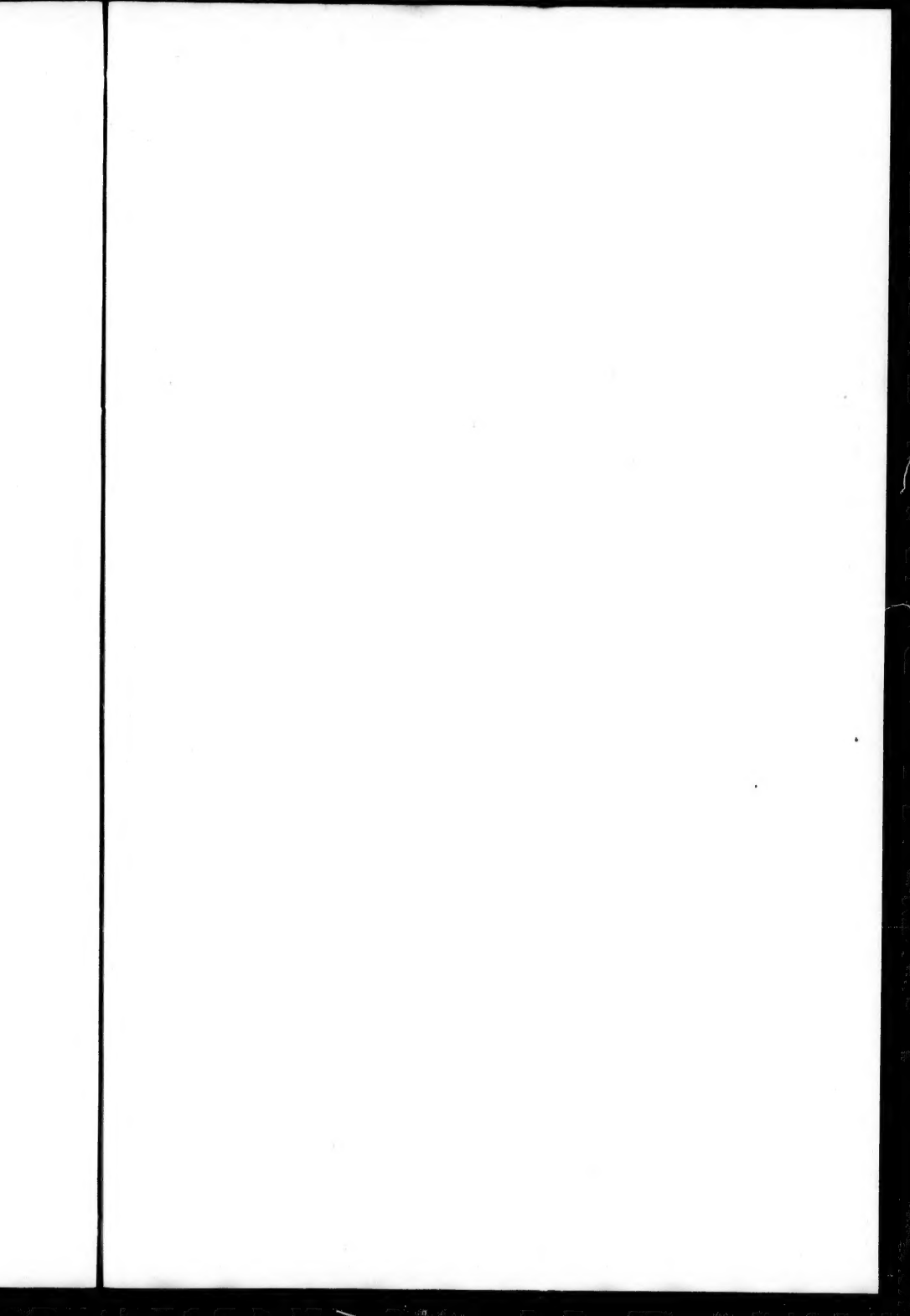
212. To the *four final claims* advanced by the United States the following rejoinders are made by the British Government:—

121. To the *first claim* it is replied: that in view of the facts and circumstances established by the evidence, the United States neither has, nor can have, any property in an Alaskan seal herd, seeing that the fur-seals of these regions are inhabitants of the deep sea; but that those who have the right common to all nations to capture these seals have a joint complaint against the United States for having permitted that excessive slaughter of the seals while temporarily ashore for breeding purposes on the Pribiloff Islands, which is the main cause of the present threatening dearth of seals. The destruction of the industry is not in question provided mutual measures be adopted for the proper control of all methods of taking the seal whether on shore or at sea.

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213. To the *second claim* it is replied: that Great Britain has for herself and for her people an interest, an industry, and a commerce derived from the legitimate and proper use of the produce of the seals of the North Pacific which it is entitled to protect against destruction for the mere sake





of temporary gain; that these its interests are to be enjoyed on the high seas, and that all nations are properly jealous of their acknowledged common rights to the *usus* and *fructus* of the open ocean, and will never concede to any one nation the right to stop the exercise of any such common rights as it may conceive to be injurious to some one of its domestic industries.

214. To the *third claim* it is replied: that Page 300.

Russia, the United States, and Japan have the power and the duty of preserving the fur-seal during its temporary sojourn on shore, but that mankind has common rights on the open ocean, including right of capture of the fur-seal, while in its proper element, and of these rights Great Britain is, in this case, in a sense the guardian or trustee for other nations, and they are rights which these nations will be unwilling to surrender for the sole benefit of a single Commercial Company.

215. To the *fourth claim*, that the extermination Page 301. of the seals can only be prevented by the abolition of pelagic sealing, it is replied that in all previous cases of commercial extermination, slaughter on shore has been the only cause, and that the destruction of the industries involved in this case can readily be prevented by timely international arrangements covering all sources of supply of the raw material—the seal-skin—whether on shore or at sea.

216. It is therefore contended on the part of Great Britain that—while, for the purpose of preservation of the fur-seal, special responsibilities undoubtedly devolve upon the Powers under whose territorial jurisdiction the principal breeding-islands of the fur-seal are included, because these Powers, by an injudicious or excessive exercise of their rights, might seriously injure the general interests involved in the fur-seal fishery—no limitation of, or interference with, the right of killing the fur-seals upon the high seas can be justly or properly asked for by these Powers, or either of them, without a corresponding offer and stipulated limitation of the killing of seals upon the breeding-islands and in the adjacent territorial waters.

That the demand for such limitation or interference with the seal fishery has, so far, been made only on the part of and in the exclusive interests of the lessees of the United States on the Pribyloff Islands; and that even if the

methods of control and restriction which are reported to have been exercised upon the breeding-islands have heretofore been strictly and impartially enforced, without some specific guarantee of the continued exercise of such control, and of adequate reduction of numbers taken, no curtailment of general rights upon the high seas can be justified.

G. B.-P.

October 31, 1892.
